Supreme Court of the United States

OCTOBER TERM, 1966

No. 53

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

C & C PLYWOOD CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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[fol. A]

BEFORE THE NATIONAL LABOR RELATIONS BOARD
NINETEENTH REGION

Case No. 19-CA-2686

C & C PLYWOOD CORPORATION

and

PLYWOOD, LUMBER AND SAWMILL WORKERS LOCAL UNION No. 2405, AFL-CIO

COMPLAINT AND NOTICE OF HEARING—
Dated Sept. 18, 1963

It having been charged by Plywood, Lumber and Sawmill Workers Local Union No. 2405, AFL-CIO (herein called the Union) that C & C Plywood Corporation (herein called Respondent) has engaged in, and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, et seq., herein called the Act, the General Counsel of the National Labor Relations Board, on behalf of said Board, by the undersigned Regional Director for the Nineteenth Region, acting pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 8, as amended, hereby issues this Complaint and Notice of hearing and alleges as follows:

1. The charge herein was filed on August 31, 1963, and a copy thereof was served by registered mail upon Respondent on or about the same date.

2. Respondent is now, and has been at all times material herein, an Oregon corporation, with its principal place of business located in Kalispell, Montana, where it is engaged in the business of processing and manufacturing plywood from green veneer.

During the past 12 months, Respondent purchased from points outside the State of Montana goods valued in excess of $50,000 and sold plywood valued in excess of

$50,000 to purchasers located at points outside the State of Montana.

3. Respondent, at all times material herein, has been an Employer within the meaning of Section 2(2) of the Act, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

[fol. B] 4. The Union is a labor organization within the meaning of Section 2(5) of the Act.

5. The following unit is now, and at all times herein alleged, has been a unit of employees of Respondent appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All production and maintenance employees of the Employer at its veneer and plywood plants near Kalispell, Montana, excluding office clerical employees, guards, professional employees, and supervisors as defined in the Act.

6. Since on or about August 28, 1962, and at all times material herein, the Union has been the certified representative for purposes of collective bargaining in the appropriate unit set forth in paragraph 5, above, and by virtue of Section 9(a) of the Act, has been and now is the exclusive representative of all employees in said unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

7. From September 1962 until May 1, 1963, the Union and Respondent engaged in approximately 15 bargaining sessions which culminated in a signed collective-bargaining agreement, effective May 1, 1963, and expiring October 31, 1968.

8. Since on or about May 20, 1963, without consulting the Union, Respondent unilaterally, and over the objection of said Union, instituted a group wage incentive plan covering approximately one-fourth of the employees in the appropriate unit.

9. Since on or about May 20, 1963, and at all times thereafter, Respondent has refused upon demand made by the union, and continues to refuse to bargain collectively with the Union over the group wage incentive plan.

10. By the acts of Respondent as described in paragraphs 8 and 9 above, Respondent interfered with, restrained and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act, and by said acts Respondent has engaged in, and is now engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

[fol. C] 11. By refusing to bargain with the Union, as set forth and described in paragraphs 8 and 9 above, as the representative of its employees in the appropriate unit, Respondent has engaged in, and is now engaging in, unfair labor practices within the meaning of Section 8(a)(5) of the Act.

12. The acts of Respondent, as set forth and described in paragraphs 8 and 9 above, occurring in connection with the operations of Respondent as described in paragraph 2 above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states of the United States and lead to and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce, and constitute unfair labor practices within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 16th day of October, 1963, at 10:00 a.m. (MST) in the Council Chamber of the City Hall in Kalispell, Montana, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the Board, an original and four copies of an answer to this Complaint within 10 days from the service thereof and that unless it does so all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board.

Dated at Seattle, Washington, this 18th day of September, 1968.

/s/ Thomas P. Graham, Jr.
Regional Director

National Labor Relations Board, Region 19
327 Logan Building, Seattle, Wash. 98101

[fol. D]

BEFORE THE
NATIONAL LABOR RELATIONS BOARD
NINETEENTH REGION

Case No. 19-CA-2686

[Title Omitted]

ANSWER

Comes now the Employer herein and for Answer to the Compaint issued by the Regional Director for the Nineteenth Region of the National Labor Relations Board under date of September 18, 1968, avers and alleges as follows:

I

A charge bearing this Case Number was received in the United States Mail by the Employer shortly after August 1, 1968, which indicates the charge was filed with the National Labor Relations Board on July 31, 1968. Except as admitted herein, the Employer denies each, every and all of the allegations of paragraph 1. of the Complaint.

II

The Employer herein admits paragraphs numbered 2., 3., 4., 5., and 6. of the Complaint.

III

The Employer herein admits paragraph numbered 7. of the Complaint except that eleven (11), instead of fifteen (15) bargaining sessions were held in the period alleged. A complete agreement governing rates of pay, wages, hours of employment, and other conditions of employment was concluded, reduced to writing, and signed by representatives of the Employer and Union under date of May 1, 1963.

IV

On May 20, 1963, the Employer herein, pursuant to the provisions of the collective bargaining agreement, executed under date of May 1, 1963, posted a notice a copy of [fol. E] which is attached hereto and marked as Employer's Exhibit No. 1 and made a part hereof as if fully set out hereat. Thereafter, and on June 7, 1963, and July 15, 1963, the Employer met with representatives of the Union and fully discussed and negotiated with the Union herein involved in good faith regarding the notice herein referred to and its contents. Except as herein stated, the Employer denies each, every and all of the allegations of paragraphs number 8., 9., 10., 11., and 12. of the Complaint.

WHEREFORE, the Employer herein respectfully prays that the Complaint herein be dismissed and the Employer awarded its costs, disbursements, and attorney's fees herein.

/s/ George J. Tichy
GEORGE J. TICHY
Attorney for Employer

Address and Telephone Number:
West 721 Second Avenue
Spokane, Washington 99204
Telephone: Area Code 509
MAdison 4-2258

[Duly Sworn to by Clay Thomason
Jurat Omitted in Printing]

[fol. F]

EXHIBIT NO. 1 TO ANSWER

C & C PLYWOOD CORP.

May 20, 1963

GLUE SPREADER CREW PREMIUM PAY

This premium pay schedule will be tried for the next couple of months to determine how it will work for all concerned.

Core feeders, core layers, and sheet turners only will benefit from this premium pay.

The conditions are, as follows:

(1) The footage will be computed on a pay-period time basis (every two weeks).

(2) Every member of the spreader crew will receive $2.50 per hour if footage is achieved.

(3) This rate will apply to over-time also, but only to the time worked on the spreader.

(4) The cold press spreaders must average 7,500′ core-line basis per hour.

(5) Hot press three-man crew must average 3,750′ core-line basis per hour.

(6) Smoke-times must be considered as time worked.

(7) Rejects must remain at 5% or less for the period.

(8) The Company will do everything possible to assist the crews in obtaining this footage by dividing the stock as evenly as possible, however, the foremen will make all stock decisions.

(9) A complete report of the footage averages and reject percentages will be posted at the end of the payroll period.

[fol. 1]

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Nineteenth Region

Case No. 19-CA-2686

In the Matter of:

C & C PLYWOOD CORPORATION

and

PLYWOOD, LUMBER AND SAWMILL WORKERS LOCAL UNION No. 2405, AFL-CIO

EXCERPTS FROM TRANSCRIPT OF TESTIMONY BEFORE TRIAL EXAMINER—OCT. 16, 1963

Room 205,
Flat Head County Court House,
Kalispell, Montana

The above-entitled matter came on for hearing, pursuant to notice, at 2 o'clock, p.m.

BEFORE:

MAURICE M. MILLER, Trial Examiner.

APPEARANCES:

ROBERT F. STANGE
327 Logan Building, Seattle, Washington, appearing as counsel for General Counsel.

ROBERT C. WELLER
P.O. Box 201, Kalispell, Montana, appearing on behalf of Plywood, Lumber and Sawmill Workers Local Union No. 2405, the Union.

GEORGE J. TICHY
West 721 Second Avenue, Spokane, Washington, 99204, appearing on behalf of C & C Plywood Corporation, the Employer.

[fol. 7] * * * *

TRIAL EXAMINER:

Are you ready to proceed on behalf of the General Counsel?

MR. STANGE: Yes, Mr. Examiner.

Before we proceed further, I would like to move the Examiner for permission to amend the complaint in Paragraph 1 to correct a typographical error to show the date in the first sentence of Paragraph 1 as July 31, 1963, in place of August 31, 1963, and then in Paragraph No. 7 to change the second sentence by deleting the word "approximately" and the number 15 and inserting for these two deletions the number 11.

MR. TICHY: The Employer has no objection * * *

[fol. 9] * * * *

MR. STANGE: General Counsel calls Robert Weller.

* * * *

DIRECT EXAMINATION

Q. (By Mr. Stange) Mr. Weller, will you state your name and address?

A. Robert C. Weller, Box 201, Kalispell, Montana.

Q. What is your occupation?

A. Executive secretary of the Montana District Council Lumber and Saw Mill Workers.

Q. How long have you been in that position?

A. Twenty years.

Q. Now, calling your attention to approximately May 1 of 1963, did you enter into a collective bargaining agreement with C & C Plywood Corporation?

A. Yes.

Q. Had there been a history of bargaining with the corporation?

A. Yes.

Q. And over what period of time did that occur?

[fol. 10] A. First bargaining session, I believe, was on October 2, 1962.

Q. And was the union, the local union No. 2405, a certified bargaining agent?

A. It was.

* * * *

[fol. 11] * * * *

Q. (By Mr. Stange) Now, calling your attention to the week beginning May 19, 1963, were you informed that the Employer C & C Plywood Corporation had instituted an incentive wage plan?

A. Yes, I was.

Q. And do you recall what date you were informed of this?

A. No, I don't. It was during that week, middle or latter part of that week.

Q. And how did this matter come to your attention?

A. One of the members employed there brought a copy of the notice and it was posted on the bulletin board.

* * * *

Q. (By Mr. Stange) I hand you what has been marked as General Counsel's Exhibit 3 for identification and ask you what that is?

A. This is a copy of the notice that was posted on the bulletin board and later brought into my office.

Q. And this is, in fact, the glue spreader crew premium pay plan the Company instituted?

A. It is.

[fol. 12] * * * *

Q. (By Mr. Stange) Prior to this General Counsel's 3 having been brought to your attention, had you and C & C Plywood discussed a premium pay plan?

A. No, not specifically. It was quite sometime prior to the time the agreement was signed. The point was raised in a bargaining session but not very seriously.

Q. This was prior to the execution of the collective bargaining agreement?

A. Yes, quite sometime prior.

Q. And how was this presented by the company, if it was?

A. It wasn't actually presented in a general discussion. I think reference was made to the fact that the J. Neils Lumber Company had proposed an incentive bonus system in its plywood department which the union had resisted and the Company had withdrawn.

Q. What was your position in negotiations as the union's position in the negotiations with regard to this gen-

[fol. 13] eral discussion on the premium pay plan?

A. I think we made it clear we wouldn't agree to such a plan.

Q. Now, after this premium pay plan or incentive pay plan was brought to your attention by a member of your union, what action, if any, did you take?

A. I wrote the Company a letter and requested a meeting with them to discuss that.

* * * *

Q. (By Mr. Stange) As a result of your letter of May 27, 1963, requesting a meeting what, if anything, occurred after this letter?

A. We received a reply from the company suggesting [fol. 14] a date for the meeting.

* * * *

Q. (By Mr. Stange) Was there in fact a meeting held on June 7, 1963?

A. There was.

Q. And you have already testified you were not present?

A. I was not.

Q. Were you informed of the results of that meeting? [fol. 15] A. Yes, I was informed by Mr. Cole afterward.

* * * *

Q. (By Mr. Stange) Then, after that June 7 meeting, what did you do, if anything?

A. After talking to Mr. Cole I wrote the company another letter stating I understand we would put our position in writing again which I did. We referred to our position that we were opposed to an incentive bonus.

[fol. 16] * * * *

Q. (By Mr. Stange) As a result of your letter of June 7, was a meeting set up?

A. Yes, another meeting was later agreed upon to be held, I believe, the date was July 15.

Q. And was the meeting held on that date?

A. Yes.

Q. And were you present at the time of that meeting?

A. Yes.

Q. Where did that meeting take place?

A. At the company office on Sunset Drive.

Q. Who was present?

A. I was present. Allie Cole was present. Two members of the plant shop committee were, Jack Taylor and Morton Hoye.

Q. Do you recall approximately what time of day that might have been?

A. I think 3 p.m.

Q. Now, at this meeting, did the matter of the incentive pay plan arise?

A. Yes, we brought it up. I brought it up.

[fol. 17] Q. What is the best you can recollection—tell us what you told the company representative and what was told to you.

A. I made an effort to talk them out of it and asked them to discontinue it.

Q. Will you tell us, did you explain to them what your position was based upon?

A. Yes, we stated our position was based on the fact we had agreed to our hourly rate of pay. We had not agreed to any incentive bonus, that we would not agree to a bonus. We didn't think the subject was one that could be opened for negotiations at that time since the contract including wages was closed. I recall stating that if it was necessary for us to litigate the matter, we thought that we would be able to beat the company in the litigation and suggested we just discontinue it.

Q. And what was the company's position as expressed to you?

A. Well, they didn't agree to discontinue it and more or less laughed about my statement that if it was necessary to litigate, I thought we would beat them and said it wouldn't be the first time. It was more of an informal sort of attitude. No agreement was reached.

Q. Did you discuss the terms of the incentive pay plan at all?

A. No, just that we were opposed to that type of wage adjustment. We didn't discuss the specific terms.

• • • •

[fol. 18] * * * *

CROSS-EXAMINATION

Q. (By Mr. Tichy) Mr. Weller, you indicated the first meeting in the series of the negotiations occurred on October 2, 1962. The last meeting was on April 19, 1963, was it not?

A. Yes.

Q. Now, you testified that with respect to the period during which the contract was being negotiated that the company discussed its desire to establish a premium pay plan, is that what I understand your testimony to be?

A. No, I don't think I said that. I said it was raised. The discussion, as I recall, revolved around the J. Neils Lumber Company.

Q. Wasn't it also true that the Mount Lolo Lumber Company was mentioned and their premium pay plan?

A. Not to my recollection. We were talking in terms of the Plywood operation. In fact, I don't know Mount Lolo has an incentive plan.

[fol. 19] Q. What I was trying to recall for you was whether or not in the course of that discussion there was discussion of other premium paid plans such as the one at Mount Lolo?

A. Not that I recall.

Q. Now, wasn't it true that these so-called premium incentive plans were discussed at some length in the meeting, particularly that which occurred on March 12, 1963?

A. I don't think so, in fact, the company didn't actually propose any incentive rates.

Q. The company didn't make any specific proposal as to given rates?

A. No.

Q. Didn't the company advise you and your associates representing the union that they were studying an incentive or premium program?

A. That they had and probably were studying it or considering it or something.

Q. And that they were anticipating putting one into effect?

A. They may have said they would like to or had in mind something like that but they didn't anticipate they were going to put anything into effect.

Q. Talking about this premium or incentive plan, the reference was to the glue spreaders crew?

A. It was.

Q. At the meeting on July 15, which you described to [fol. 20] be the meeting at which you were in attendance, the particular meeting concerning the premium pay plan which has been introduced as General Counsel's Exhibit No. 3, did you or the union make any inquiry or request any information in connection with it?

A. No, we didn't. We just said we didn't like it and wanted to discontinue it.

Q. So the whole point in that July 15 meeting was that the union wanted the plan discontinued. They didn't want to talk about it or to negotiate concerning any revisions in the plan.

A. We didn't propose any revisions, no. I didn't think from either side any revisions were discussed.

Q. The company explained, did it not through Mr. Bright at some length why it felt justified in establishing this plan, did it not?

A. Yes.

Q. And can you recall for us what was said?

A. No, not all what was said. Substantially, they felt it would be a good thing for the company and also for the employees.

Q. Didn't the company point to a provision in its contract and say we believe we are entitled—

A. (Interrupting) They considered it to be a premium rate of pay which we disputed.

[fol. 21] * * * *

MR. TICHY: So that the record might be complete at this point, Mr. Trial Examiner, I would propose that we read into the record at this point Paragraph (a) of Article 17, Wages, * * *

* * * *

Q. (By Mr. Tichy) Mr. Weller, the company officials, did they not refer to this portion of the contract as justi-
[fol. 22] fication for the premium pay plan?

A. Yes, I think so.

Q. And was there considerable discussion as to whether that was applicable or not?

A. There was from our side of the table. We pointed out this was not the regard of a particular employee and it wasn't for special fitness, skill, or aptitude or the like.

Q. At this point you are expressing the opinion of the union.

A. I think I am repeating what we said.

Q. But you were expressing what was the opinion of the union.

A. Yes, we pointed out also this dealt with, I believe, nine crews of employees whether they were brand new, experienced, had skills or didn't have skills or what. It didn't deal with a particular employee.

* * * * *

Q. Now, in your testimony concerning the discussions prior to the agreement on the contract which has been introduced as General Counsel's Exhibit No. 2, you indicated that a point was not seriously raised. Do you recall that testimony?

A. That is correct.

Q. The reflection or the observation that the point was
[fol. 23] not seriously raised is a conclusion on your part. That is the way you feel.

A. Yes. I do recall, George, in the last two bargaining sessions, April 19 and the meeting in March 12, I believe is right, the wage discussion revolved around the glue spreader crews. The company was proposing a lower wage rate on the spreader crews and we were insistent upon increasing those rates and the rate scales for the spreader crews.

Q. However, the company at those meetings did indicate they were contemplating a study of premium pay rates for spreader crews?

A. Not in either one of those meetings. It is possible one of the discussions might have been in one of those

meetings but it never got to the point of proposal of any kind.

Q. But no specific proposal. The company indicated they were studying and planning?

A. Yes, that they were giving thought to it. That is correct.

Q. You are, are you not, also the business representative for Local Union No. 2405 involved in these proceedings?

A. Yes.

Q. And you were also the business representative of the Montana District Council?

A. Right.

Q. And the Montana District is made up of all of the plywood, Lumber and sawmill workers, loggers, local unions in western or in Montana?

[fol. 24] A. In Montana, yes.

Q. And among those local unions is the one Local 2797 and you are the business agent for them?

A. Yes.

Q. And there is a Local Union 2685 in Missoula and you are the business agent of it?

A. By virtue of the business district council secretary. I am a business agent of it. The local has another business agent too.

* * * *

REDIRECT EXAMINATION

Q. (By Mr. Stange) Mr. Tichy, has suggested that the company presented you with a plan or discussion of a plan for a method of changing the glue spreader crew method of payment, is that correct?

A. He suggested that.

Q. But no details of this were—

A. (Interrupting) I can't recall that we even have seriously discussed it. It was just a general discussion.

Q. Do you know, approximately, how many employees are employed in the production department at this company?

MR. TICHY: Mr. Stange, I am prepared to offer you a stipulation which I feel in the interest of a good record,

would avoid putting Mr. Weller on the spot and having the actual facts.

I am proposing this stipulation. In May 1963, the total [fol. 25] number of employees coming under the collective bargaining unit involved here was 181; in June 186; July 201, August 199, September 194. I wish to change my stipulation. That is as of the first day of the month of each of those dates that was the total number of employees coming under the collective bargaining unit involved in these proceedings.

* * * *

MR. STANGE: Mr. Tichy, I have been informed those totals include the separate company Veneers Incorporated and not just C & C Plywood.

MR. TICHY: If your attention was closely applied, I talked about all of the employees coming under the collective bargaining unit. * * *

MR. STANGE (interrupting): To save time, I am prepared to accept your stipulation * * *

[fol. 29] * * * *

RECROSS-EXAMINATION

[fol. 30] Q. (By Mr. Tichy) Turning to General Counsel's Exhibit 3 which is the premium pay plan, in order to qualify for the additional wage specified therein an employee is required to as a result produce more of the product than he is working on, isn't that true?

A. A crew is required to.

Q. Well, now, a crew ordinarily consists of how many men, do you know?

It's usually four men, is it not?

A. I would say six.

Q. From four to six?

A. Yes.

Q. Well, are you contending that under the General Counsel's Exhibit No. 3 that this is not a method of paying an employee a premium rate?

A. Yes, because it depends on the production of the entire crew.

* * * *

MR. STANGE: Are you aware of anyone receiving, in fact, a premium paid at C & C Plywood over and above the scheduled rate?

THE WITNESS: Individuals?

MR. STANGE: Individuals.

THE WITNESS: Yes.

MR. STANGE: Has the union raised any objection to these?

[fol. 31] THE WITNESS: No, it provided in our contract—as a matter of fact, at least one member of one of the spreader crews has a premium rate over and above the other contractual rate. He actually loses his premium rate whenever they meet this production figure because then he gets the same as everyone else.

* * * *

MR. TICHY: Mr. Weller, are you familiar with the premium pay plans in existence at some of the other operations under essentially this same language in western Montana where more than one individual is involved?

THE WITNESS: They are not premium pay plans. We have some car loaders on a piece load basis.

MR. TICHY: Where about?

THE WITNESS: Stoltze Lumber Company, and I believe at J. Neils Lumber Company. * * *

* * * *

MR. TICHY: Are you in a position to testify that the Mount Lolo arrangement is a flat hourly rate if they fail to reach a certain norm?

THE WITNESS: Not guaranteed. They have a guaranteed rate.

MR. TICHY: Which is the contractual hourly rate in [fol. 32] the absence of meeting certain norms.

THE WITNESS: They have a contractual piece rate work with a guarantee, a minimum guarantee.

MR. TICHY: It is an hourly rate at the lowest?

THE WITNESS: No, they work on piece work basis but are guaranteed to make so much an hour.

MR. TICHY: Are you certain of that now?

THE WITNESS: Yes. We have the same situation just going into effect at Anconda Company, guarantee $2.10 an hour but the rate is piece work rate.

* * * *

MR. STANGE: General Counsel calls Mr. Allie Cole.

* * * *

DIRECT EXAMINATION

Q. (By Mr. Stange) Will you state your full name and address.

A. Allie Cole, International Representative, Brotherhood of Carpenters, P.O. Box 71, Lakeside, Montana.

Q. And how long have been the International Representative?

[fol. 33] A. Twenty-one years or a little better.

Q. You have been present in the room during the testimony of Mr. Weller, is that correct?

A. Yes, I have.

Q. And you have heard Mr. Weller testify that he directed you to attend the meeting on July 7?

A. June 7, 1963.

Q. To discuss the matter of the incentive wage plan with C & C Plywood Corporation?

A. Right.

Q. Would you tell us, please, what took place—well, first, where did that meeting take place?

A. At the company office.

Q. And what time of day?

A. Approximately 8 o'clock.

Q. And who was present at that meeting?

A. I acted as the spokesman on behalf of the District Council and local union. There were three committee members, Mr. Hoye, Stinger, and Taylor were the three committee members.

Q. At that meeting did you discuss the glue spreader crew pay plan?

A. Well, that was the main purpose of the meeting. We discussed that and several other grievances that came about. We discussed them at that particular meeting.

This particular situation concerning the bonus system that [fol. 34] was instituted by the company, that was the first item of discussion that particular day.

Q. Can you tell us what took place during the course of this discussion, what you said to the company representative and what was said to you, please?

A. Well, I stated my position and I said it was the position of District Council that we were opposed to the institution of the bonus system by the company as has been posted on the bulletin board and that we thought that it was a direct violation of Article 17 of the working agreement that was previously entered into between the union and the company and I think at that point, if I remember correctly, Dexter Bright, who was representing the company at that meeting, he stated why the union was so concerned about the bonus plan when it seemed to be the company figured the employees were satisfied and I stated at that time that it was my opinion after conferring with most all of the employees that were directly involved with the bonus system on the glue spreader crew, that at least 95 per cent of those were most unhappy and dissatisfied with the bonus system.

Q. Were you aware how this bonus system or incentive system or premium pay, whatever it may be, called, operated?

A. Yes, I was.

Q. Can you tell us how this plan operated?

A. Well, they have to reach a production goal over a period, as I understand, each week of, I think it is 64,000 in order to qualify themselves for the bonus system over [fol. 35] and above their contractual rate.

Q. What was the contractual rate?

* * * *

THE WITNESS: It would be the core feeder at $2.24; the core layer, $2.29; the sheet turner, $2.15. I do not know that those others are involved in the overall crews that operate as spreader crews. I know those are involved. I have never worked directly in a plywood plant but I know from talking with the people working there, those particular classifications are involved in this bonus system.

Q. (By Mr. Stange) Were you aware that there was a member of one of the glue spreader crews who was receiving over the classified wage scale?

A. Yes.

Q. Do you know who that was?

A. Darrel Osborn is, as I understand, receiving $2.40 an hour. He was a core layer as I understand.

[fol. 37] * * * *

Q. Did you discuss this premium plan at any union meeting?

A. Yes, we talked about it at the union meetings.

Q. And you have already testified you had been informed that the majority in your opinion objected to this plan?

A. Right.

* * * *

MR. TICHY: I am going to object. * * *

[fol. 38] * * * *

TRIAL EXAMINER: Well, I think I understand the issue here. I am going to overrule the objection and permit the testimony and I am going to state for the record the basis on which I am making my ruling. If there are any further observations that you may want to make, I will hear them at the time. On the basis of the portion of the contract which you read into the record and to which my attention has been directed, the heart of the matter appears to lie in the second sentence of Article 17. As I read that sentence, the right which the Employer reserves therein has three elements. What is reserved is the right to pay, one, a premium rate over and above the premium contractual rate; two, a premium rate having those characteristics which is calculated to reward particular employees; three, a right to pay a premium rate over and above the contractual classified rate which rewards such employees for special fitness, skill, aptitude, or the like. We have three elements to consider. Now, I take it that if the company says, as you indicate, [fol. 39] they will, that this particular plan reflected in General Counsel's 3 is an exercise of the employer's re-

served right. The question of whether or not the plan as drawn and as effectuated, meets all those three qualifications is one presumption you will have to decide to determine whether the plan falls within the employer's reserved right. To the extent that the union's position with respect to that aspect of the matter was taken on the basis or adopted on the basis of representation's made to the union representatives by employees, I think I am going to be interested in what the representations were made to the union by employees.

MR. TICHY: I would like to make this observation in light of what you have said, Mr. Trial Examiner. I also am confident from your skill and experience in this field, you will recognize it is hearsay evidence that is being testified.

TRIAL EXAMINER: So understood.

* * * *

Q. (By Mr. Stange) Now, would you tell us, please, what the objections were that were expressed to you in the operation of this plan by your members.

MR. TICHY: With all due respect, I would object and have continuing exceptions.

TRIAL EXAMINER: You have a continuing objection as to this particular line, namely, what the witness [fol. 40] may have heard from union members and for the record the objection is overruled.

A. Well, in discussing the bonus system, it was instituted by the company with the various members of the spreader crews. Their objections were primarily based on the fact that there was many elements entered into, whether they would be able to achieve the maximum production in order to gain the bonus. In other words, they said, an example, the lifters operate or bring the proper material to the spreader crew, could he effect the production in one particular day and—

Q. (Interrupting) Lift truck operator is not a member of the glue spreaders?

A. No, he brings his material to the spreader crews?

Q. What you are testifying then, they were objecting their premium pay depended on the activity of some other employees in some instances?

A. That is correct. From there on they objected to the fact of this makeup of the spreader crews. If there happened to be two of them that were inexperienced, they would greatly effect the outcome of the production that would qualify them for making the bonus system. For example, if there was an inexperienced sheet turner, that would have a direct effect on whether they would ultimately make the bonus that day or for the weekly period. There was many elements involved in the process of bringing the material and handling the material up to the finished product which would effect the outcome of [fol. 41] whether they would make a bonus or whether they didn't. As I understand it, there was only one crew, which was a special made up crew, that made the bonus for sometime out of the four, whatever number, of spreader crews there were.

* * * *

[fol. 42]

CROSS-EXAMINATION

* * * *

Q. If I understand your testimony correctly, Allie, what you have told us, then, is that if the spreader crew, consisting of the core feeder, the core layer, and how many sheet turners?

A. Two.

Q. Two sheet turners, that if they produce more than you might say an average day or usual day that, then, they get this bonus?

A. Not just one day. It is over a period of time.

Q. Over a period of a week, is it not?

A. I think to begin it was over a period of two weeks and the company then changed that to one week. It was changed from the original bonus system at a later day from two weeks to one week.

Q. The point is this program permits an employee to increase his classified contractual rate by greater production?

A. Permits him to earn a bonus providing he meets a

[fol. 43] certain quota at the end of a weeks period.

Q. And have you watched these crews, these glue spreader crews?

A. Not to any extent.

Q. You are not specifically familiar with any of the skills involved?

A. Not other than what the employees themselves have told me.

Q. Now, the conversations that you talked about were, did I understand you, with union members or did you say employees?

A. Well, I don't remember exactly what I said, but I have talked with both union members and I think one that perhaps, to my knowledge, wasn't a union member.

Q. However, not all of the employees engaged in spreader crews are union members?

A. I wouldn't rightly know.

Q. Then, I did Understand your testimony to be that at no meeting that you attended was any reference made to Mr. Osborn or his wage schedule or anything concerning his premium arrangement?

A. What kind of meeting are you referring to?

Q. Negotiations with the Employer.

A. Not to my knowledge.

Q. Or grievances on the one on June 7 and the one on July 15?

A. I will put it this way, Mr. Osborn's premium rate, hourly rate, wasn't discussed before anyone of the management.

[fol. 44] * * * *

MR. TICHY: Mr. Trial Examiner and Gentlemen, we would propose to stipulate that the total numtlemen, we would propose to stipulate that the total number of employees employed on glue spreader crews on April 1, 1963, was 26. On May 1, 1963 was 26; on June 1, 1963 was 30; on July 1, 1963 was 32; on August 1, 1963 was 32; on September 1, 1963, was 32. * * *

* * * *

[fol. 45] * * * *

MR. STANGE: With this understanding I have no objection in joining with the stipulation.

TRIAL EXAMINER: Very well, the stipulation is accepted.

MR. STANGE: General Counsel rests his case in chief.

MR. TICHY: May it please the Trial Examiner, I will move for a dismissal of the Complaint and I wish to speak to this in a brief manner but yet in very great earnestness because I feel that although there has been to my own knowledge and experience a reluctance on the part of trial examiners to dismiss a proceeding at this stage of the proceeding, I feel we have here a case which clearly and uninequivocally warrants a dismissal at this time.

* * * *

[fol. 49] MR. TICHY: At this time the Employer will call Mr. Clay Thomason.

* * * *

DIRECT EXAMINATION

* * * *

Q. Your present position?

A. General Manager and Assistant-secretary for C & C Plywood Corporation and general manager for Veneers Incorporated.

[fol. 50] Q. How long have you been occupying those positions?

A. C & C Plywood since 1959, Veneers Incorporated since 1960.

Q. How long have you worked in the veneer and plywood industry?

A. Fourteen years.

Q. Are you thoroughly familiar with the functions of the glue spreader crews at C & C Plywood Corporation?

A. Yes, I am.

* * * *

Q. A glue spreader crew consists of how many individuals?

A. Normally four. We have had one instance where the crew consists of three for a short period of time.

Q. Now, those four, when it consists of four people, would normally be what job classification?

A. One core feeder, two core layers, one sheet turner.

Q. And, now, which of those jobs would be the first in the course of following the material in its normal progress?

A. Core feeder.

Q. Will you tell us what a core feeder does?

A. The core feeder feeds the cross banding veneer through the glue spreader machine to the core layer. He must feed the core rapidly, exactly, with a certain amount of rhythm. He must watch the glue level in the machine. His particular responsibility is to the top roll on the glue spreader which contains two rolls a top and bottom roll.

[fol. 51] Q. There is glue in a vat-like sort of affair and then this glue goes on these two rolls which in turn as the material goes through the two rolls, glue spreads on both sides, is that correct?

A. That is correct.

Q. Perhaps to better understand this, will you explain to us how plywood is made in terms of layers and direction?

A. The eight-foot direction or the face veneers on a panel of plywood are laid up together with a cross band separating the two faces and in the case of five ply, we will have three center portions of veneer or two cross bands with glue, a center and the two faces making a five-ply panel. These are prepared in advance of the press at the glue spreader in what we term batches which may contain 35 to 40 panels in one particular thickness and up to 80 to 100 in another particular thickness. These are then transferred to the cold press or hot press and placed under pressure until the glue is cured. When the panels are removed from the press, the faces being laid directly adjacent to each other have no glue between them which separate the panels.

Q. Now, when you have a three-ply plywood board, you have a back which is normally a piece four foot by eight feet, approximately, is that correct?

A. Four foot wide by eight feet long.

Q. And then you have a core that runs in the opposite direction to the back, isn't that correct?

[fol. 52] A. Ninety degrees, that is correct.

* * * *

Q. (By Mr. Tichy) And this core has glue on both sides of it?

A. That is correct.

Q. So when the face, again a four foot by eight foot piece of veneer, is placed on top of it and the three pressed together you then obtain a three-ply plywood board, is that correct?

A. That is correct.

Q. And a five-ply plywood board is esentially the same except that you have what you would call a center which, again, goes in the same direction or grain runs in the same direction as the face and the back?

A. That is true.

Q. And then the core would be, or, rather, what would you call those two that go the opposite direction?

A. They are cross banding core.

Q. Now, the core feeder, you say, takes these cross-banding pieces of veneer and he runs it through the glue spreading machine?

A. That is correct.

Q. And what happens after it gets through the glue spreading machine?

A. The piece of core is spread on both sides with glue and is then caught by the core layer and placed on the [fol. 53] load directly in front of the glue spreader which is the spot for building up this batch of plywood. The core layer then lays the pieces side by side the full length of the sheet and the panel.

Q. Then, what is the next step in this procedure?

A. Then, the sheet turner and other core layer, who relieves in two-hour periods, place the next face on the cross-band core.

Q. And having placed that next layer, then, more core comes through the glue machine and this process is just repeated and repeated?

A. That is correct. They place the back on one panel and the face on the other panel at the same time.

Q. So they will have when they are placing the back on the face, the sheet turner will have two pieces in their hands as they put it down?

A. That is correct.

TRIAL EXAMINER: What you are describing is five-ply panel?

THE WITNESS: That is three-ply panel. In a five-ply panel, they will place two sheets. Then, the next time they will place the one center piece because there are two crossbands of core with glue on them placed in a five-ply panel so they will put on one single, center on, then the two faces again, then, the single center, then the two faces again.

Q. (By Mr. Tichy) Actually, then, at a given moment forgetting about the names of job classifications as such, at a given moment the crew consists of a core feeder, a core layer, and two individuals who are acting as a [fol. 54] sheet turner, is that correct?

A. That is true.

Q. However, in your system at C & C Plywood you have the core layer and one sheet turner alternate and since the core layer receives a higher rate of pay under th contract than the sheet turner, that combination, those two combination men, receive core layer rates, is that right?

A. That is correct.

* * * *

Q. (By Mr. Tichy) Now, returning to each of these jobs, what special skills, aptitude, and fitness, and the like is necessary for a core feeder to operate at peak efficiency?

A. The core feeder, first of all, must have excellent coordination to attain the extra volume, the extra production, and he must be able to feed with both hands independently, pick up one piece of core and feed it through with his one hand while he is grabbing the next piece of with his other. Good vision is a very definite advantage whereby he can watch the piece of core that he is preparing to feed which he must also grade to be certain that

it has straight edges. He can watch the glue roll to be certain the top roll has sufficient volume of glue and he must also, during all this process, keep up with the core layer who is moving across, lengthwise, with these panels [fol. 55] and catching the core. Now, he also is required to watch the mirror directly over the core layer, which indicates when he is coming to the end of a panel.

Q. Did you say mirror?

A. Yes. It is up above. To obtain what we felt in this program, he must be willing to produce extra effort involved in each one of these abilities.

Q. Now, does he have to concern himself with the manner in which the material is coming to him?

A. It has a very definite—it does not have a definite bearing but it is helpful if the material is stacked properly, yes.

Q. What is the purpose of that?

A. So that he can quickly grasp the next catch of core when he completes what he has on his table.

Q. Does it make any difference whether he puts veneer core through the machine at right angles or diagonally or even opposite to 90 degrees?

A. This is very important for the core layer to be able to catch the material. He is working on the opposite side of the batch of plywood that is being laid up, consequently, he is over four feet from the glue spreader. This crossbanding material is only a little over four feet, four foot, four inches long, and if it is not fed through straight to the core layer, he is unable to grasp it and lay it in a fast and proper manner.

[fol. 56] Q. Does the batch operate relatively slowly or fast or what is the manner in which the batch operates?

A. The machine operates relatively fast.

Q. Is it possible for a core feeder to put two or even three pices together or through the machine simultaneously?

A. It is possible but certainly not accepted because it would only spread the glue on one side of the core.

Q. What would happen if more than one piece was simultaneously fed through the machine?

A. It would have to be refed. The pieces would have to be fed back to the—

Q. (Interrupting) Does this slow down the procedure?

A. It stops the procedure until the core is passed back through again.

Q. Is it possible to throw it away rather than feed it back through?

A. It is possible, but it is not accepted by the company.

Q. In other words, the company's policy is to salvage all usable material?

A. Yes.

Q. * * * What is involved in the grading?

A. In each piece of core is given the spreader in a specified grade. Each panel of plywood is laid up to specified grade but the core feeder is particularly respon- [fol. 57] sible for watching the edges and end of the core to be certain that they are straight and true before he feeds them through the machine. If a piece of core is broken in the handling before it reaches the core feeder or if a knot or defect should drop out of it before it reaches the core feeder, it is his responsibility to discard this piece of veneer before applying the costly glue to the piece.

Q. Is there any particular skill to his feeding it through the machine in the sense that—first of all, how wide is this machine?

A. Fifty-four inches wide.

Q. And the veneer or rather the plywood he is in the process of working on or the crew is working on is actually abutting the 54 inches on the eight foot side, is it not?

A. That is correct.

Q. Is there any skill or aptitude or fitness involved in how that is fed through in terms of where it is fed in the machine?

Q. Very definitely. The panel is originally started to be laid up from one end and the core must be laid tight and close together continually across this sheet of veneer. If he should have his core layer on the right side of his panel being laid up and he feeds the core through the left side, the core layer cannot reach this piece of core. He

must then move over and pick up the piece of core and transfer it to the other side.

Q. So that as I understand, a skilled core feeder is going to put it through the machine at the point that is [fol. 58] handiest for the core layer?

A. Yes.

Q. What happens if there is a feathered edge on the pile of core veneer that is handed to the core feeder?

A. The core feeder detects this feathered edge and this is also the difference between a person feeding core with a great amount of skill. He can detect a feathered edge in most cases and will rip the thin piece off the veneer before feeding it through the machine or if it is tapered to the point that the entire piece is defective, he will discard it before passing it through the glue machine.

Q. How or is there any skill, fitness, or aptitude involved in the pace or amount of core that the core feeder pushes through that machine?

A. Very definitely.

Q. Will you explain that?

A. In the amount that he can feed through is directly related to the amount the crew on the other side of the machine crew are going to lay out. If the core feeder is not well coordinated, is not capable of detecting these grading and other defects involved in the piece of veneer and slows down the other operation by improper feeding, this will effect the volume that can be produced.

Q. Can the core feeder decide to just put one piece in after another without any sort—

A. (Interrupting) No, he cannot. He must work in [fol. 59] direct relationship with the core layer to keep the panels, the core, land evenly and true and to also make the core layer's job much more efficient.

Q. So that, as I understand from what you say, after he feeds through approximately the equivelent of eight feet or slightly more of core laid side by side, he then pauses until he sees the sheet turner put down either the center sheet, if it is five-ply or in either of the other instances, the top and bottom?

A. That is correct.

Q. How does he know this, because isn't there a machine between the core feeder and core layer?

A. Yes, the glue spreading machine is between them. This is what I was referring to by the mirror, where he is watching the core layers work. When the core layer reaches the end of the panel, the core feeder must feed the piece of core of the right width to avoid waste. After this is done, then, he knows the sheet will be put on before he must feed through any more core. If he feeds an extra piece through, then, the core layer must grasp this piece of core, remove it from the core laying table, and hold it in his hands until the sheet has been applied. This also alert the core feeder as to when he can feed his next piece through to start the new core line.

Q. Does the core feeder take the material that is brought to him, these core veneers, in the order in which they are given to him or does he have to make some selection other than grading in respect to getting this?

[fol. 60] A. He definitely selects it as to width.

Q. Did I understand you to say there is a sense of timing involved in the core feeders activities?

A. Very definitely.

Q. A sense of timing is involved from the time the sheet is placed on until the next piece of core is placed through the machine. If he is hesitant, then, lost production results. If he is too quick he will catch the sheet before it is actually placed on the load causing damage to both the core and the sheet.

Q. Before going to the core layer, you have already testified that you have been in the plywood business for 12 years.

A. Fourteen years.

Q. And you have examined glue spreader crews not only in your own operation, but many others?

A. That is right and I have also worked on the glue spreader crews personally.

Q. And as a consequence of what you have just said, is it your opinion that there is a special fitness, skill, aptitude or the like necessary to do a better than average job as a core feeder?

A. Very definitely.

Q. Do you wish to elaborate on anything you have said in order to elaborate on the statement you have just made?

A. No, I think that covers it.

Q. Coming to the core layer, I believe you have al- [fol. 61] ready said that he takes each of these pieces of core as it comes out of the rolls of the core feeder machine and then he lays it down, as I understand it, on this plywood back or plywood back or center board that is laying before him. What is the procedure there?

Q. The core layer catches the core and starts from one end of the sheet, face or back, and lays the core at 90 degrees to the grain direction of the sheet, side by side, continuously across the panel.

Q. Is it permissible for him to lap one piece over another?

A. No, this results in rejects.

Q. What do you mean by reject?

A. A rejected panel that will not meet grade specifications.

Q. Its value on the plywood market is—

A. (Interrupting) Considerably less.

Q. Can he permit gaps between his pieces of core?

A. This is equally as bad as the core laps because this will result in rejected panels also.

Q. Therefore, as I understand it, the core must lie side by side as it is laid on this, in making up this plywood panel?

A. Yes, this is true.

Q. What does the core layer do if the core feeder has fed through two or three pieces erroneously and they all come through at the same time?

A. If the pieces that have come through erroneously have glue spread on them on both sides, he will separate [fol. 62] them. If they have been fed through one on top of the other through the machine whereby only one side of one piece may have glue on it, he must pass it back to the core feeder and he in turn must refeed the material back through the machine singularly.

Q. So there is apparently no harm if he feeds two pieces through simultaneously side by side?

A. Other than the fact that the core layer would not be expecting two pieces to come side by side and would result in one piece dropping to the floor or to the bench without the core layer catching it.

Q. But when two or more pieces come through simultaneiously, one on top of the other, then it must be pasted back as I understood it?

A. That is correct.

Q. Unless in the process of coming through it became broken?

A. It would be discarded then.

Q. Does the core layer engage in any grading activities?

A. Oh, yes.

Q. Explain that.

A. The core layer in the sense grading the entire core line of the panel by the straightness of the edges, the closeness of the pieces to one another, the amount of end trim on the panels that will be required, these panels are manufactured over eight feet and when they are sawed we saw off the trim. The core layer is responsible for [fol. 63] seeing the core is long enough and wide enough to cover this entire area. In the same respect, if a piece coming through the glue spreader machine and was damaged by knot falling out or the piece being caught or split up in the glue spreader machine, he must grade to determine whether the piece would be utilized or discarded.

Q. Does the core layer have any responsibility with respect to the glue spreading machine?

A. Yes, he does. The core layer is responsible for watching the bottom glue roll to be certain the automatic glue spreaders are functioning properly, and the core is being spread with glue on the bottom side.

Q. Is it possible for pieces of veneer, which as I undrstand it, is quite a thin item. How thick is it?

A. It will run from one-sixteenth of an inch to one-quarter of an inch but your main sizes are one-eighth and one-sixth.

Q. Is it possible, because of the thinness, the quality of the material, for pieces to fall off from the veneer as it

goes through the glue machine or is being handled at the glue machine, this is a happening every day that requires the glue spreader machine to be washed down at a minimum of eight hours and in some cases four hours?

A. Yes. The knots will drop out, pieces will break off while it is being pressed through the two rollers spreading the glue.

Q. Is it the responsibility then of the core layer to watch that bottom roll if something sticks to it to remove [fol. 64] it or stop it or something?

A. Yes.

Q. You say, I believe, the core feeder has the responsibility for watching for things like that on the top?

A. Yes.

* * * *

Q. He has to be sure, as I understand you, the glue is on both sides fully spread?

A. Yes, he can determine through experience whether the glue is being spread in sufficient volume on the core to adhere the panels together. In the event it is not, it is not his responsibility to change the machine but his responsibility to call it to the attention of people who will.

Q. Now, again referring to your skill, experience, and knowledge of plywood operations and particularly glue spreader crews, is it your opinion that a core layer must have a special fitness, skill, aptitude, or the like in order to be able to perform in a manner better than the average core layer?

A. Yes, very definitely.

* * * *

[fol. 65] Q. Will you please go into more detail about catching the veneer that has the glue on it as it comes out of those rolls. Is there any skill involved in that?

A. Very definitely. Core layers wear a pair of gloves to keep from contacting with the glue and this piece of core is exceedingly slick and it takes a great deal of skill to catch this core and lay it on the panel. It is one of the main reasons his skill is one of the highest paid individuals in the plywood plant.

* * * *

Q. Turning to next the job of sheet turner, as I understand, on each of these crews normally there are two sheet turners?

A. There are two people that are working as sheet turners.

Q. At a given time?

A. Yes.

* * * *

A. * * * We do classify one as a core layer and he is paid as a core layer.

Q. Please describe for us what the two individuals do that are remaining on the crew. We have talked about the core layer and core feeder. Now, the other two that are left.

[fol. 66] A. The two sheet turners prepare the eight-foot sheets for laying on the batch after the core layer has completed his line. They must be certain that the sheets are properly prepared, have a straight edge and ends lay against the back board. They must be certain that the sheet meets the grade specified in the event that mishandling or defects have developed since the sheets were graded at the dryers. They must count correctly the number of panels that are laid up in each batch. Each batch being separated by what we refer to as press boards. These press boards are placed in the batch at given intervals to keep the panels from reflecting defects from the bottom or, for example, to the top of the batch. In the event that a series of core laps were made in the bottom portion, this press board which is a heavy plywood panel is placed in the batch and this prevents this core lap from transferring to the top panels and resulting in cracked panels.

Q. When you talk about a batch, you are talking, as I understand it, the making up of these plywood panels in rough behind the glue spreader machine?

A. That is correct.

Q. Whose responsibility is it to be sure that the one of the straight ends or rather edges is against this back board?

A. This is the sheet turner.

Q. When they place it down, they are to be sure it is there?

A. Yes.

[fol. 67] Q. If it isn't, what happens?

A. Then the thing is going to be rejected because the sheet will be too far from the edge for sawing or the core layer must stop his procedure and push the sheet to the back board. Incidentally, the sheet turner must also make out the batch tickets, which are the basis for the production record for the crew.

Q. Is there any special skill required of the sheet turners?

A. Very definitely.

Q. And would you describe this?

A. The sheet turner also must be well coordinated. They must have the ability to work together. If one sheet turner is a little slower than the other, it will be impossible for them to place the sheets on in an efficient and orderly manner that would not result in broken sheets or interrupting the layup process by the core layer having to stop. They must also turn the sheets while the core layer is laying his line so that the straight edges are prepared in advance of the laying of the sheets on the batch.

Q. Now, if you have poor sheet turners, is it possible for them to ruin material that would be used as a face or back or center?

A. Yes, very definitely.

Q. As we discussed a few moments ago, it is my understanding, it is possible because this is a rather thin piece of veneer you are working with for pieces to break off or become intermingled in the load.

[fol. 68] A. True.

Q. Who is responsible if one of these little sticks or slivers or whatever you wish to call them should arrive at this point and could be put right into that batch?

A. It is the sheet turner's responsibility.

Q. What is responsibility in that connection?

A. To remove it or replace the sheet.

Q. The sheet turners are ordinarily working with what size sheet?

A. Four by eight. To clarify that, four foot plus the trim and eight foot plus the trim.

Q. There is one man on each end?

A. That is correct.

Q. In the handling of this, if it is not handled properly, it can be broken or ripped?

A. That is correct.

Q. They must also determine and grade the sheets?

A. Each sheet must be turned so that the back side of the veneer is placed next to the core line. The piece with the glue on it. There is a face and a back side to every piece of veneer. The face side being the side that is outside of the log when it is peeled. This is tight and smooth. The back side of the veneer will be rough and loosely peeled. The standard that we manufacture are plywood requiring faces and back being placed with the tight side [fol. 69] out. If the sheet is not turned or through the entire manufacturing process has been turnd over for some reason, then, it is the sheet turner's responsibility to get this sheet in its proper manner before placing it on the batch.

Q. As a result of your experience, are there any special fitness, skills, or aptitudes or the like for a sheet turner to be a better than average employee?

A. That is true, yes.

Q. Do you wish to elaborate with regard to this on sheet turners?

A. Only to the respect, we have found through past years many cases where we have placed employees on the glue spreader crews in one of these four positions that have been willing and eager to learn these particular jobs but simply were not able to even maintain average production and we were compelled to remove them from these positions.

Q. You have been in the hearing room, have you not, since the beginning of this hearing?

A. That is true.

Q. I believe Mr. Weller testified that there could be four to six employees on a glue spreader crew, is that correct?

A. Normally, only four members. The only time we would place a fifth member would be in the event of exceedingly rough stock temporarily for placement of employees throughout the mill or in the event that one spreader crew was down for a very short period of time

[fol. 70] but under normal operations only four men to the crew.

Q. And in your operation, has it been any more than four men to the crew?

A. Very seldom.

Q. I hand you, Mr. Thomason, General Counsel's Exhibit No. 3, do you recognize it?

A. Yes.

Q. And is that the premium pay arrangement that was posted on the company's bulletin board on May 20, 1963?

A. Yes.

Q. Have you made any record as to the experience of the company and glue spreader crews under their premium plan?

A. Yes, I have.

* * * *

Q. (By Mr. Tichy) I hand you, Mr. Thomason, what has been marked for purposes of identification as Employer's Exhibit No. 1. Will you tell me what it is?

A. This is the tabulation by crews of the periods from May 20 when the glue spreader crew premium pay was inaugurated to last week. This list is each spreader crew and "yes" indicates the crew received the premium pay production volume and the pay rate and the "no" indicates [fol. 71] they did not receive the premium pay. On the bottom portion of the sheet I took the period prior to the start of the premium pay and listed it also from April 1, 1963.

Q. I observe in the upper quarter portion of this document there is the table of four men underneath Day #4 men and Day #2. Will you explain that?

A. The day shift #1 crew consists of four men. Day Shift #2 consists of four men. Day #3 four men. Day #4 consisted of three men until July 1. Then the crew was increased by one person to a four-man crew. The swing one is four men, the Swing #2 four men, Swing #3 four men and here again Swing #4 was three men until July 1 when it was increased one man to four men.

Q. I observe in going to the bottom quarter of the page that we see under Swing #3 for the weeks of April

1, 1963, through May 8, 1963, showing nothing. What occasions that?

A. We did not start this spreader crew on a permanent basis until May 13, 1963, and then we added the Swing #3 crew.

Q. The tabulation you have in your hands was taken from company records, isn't that correct?

A. That is correct.

* * * *

[fol. 72] TRIAL EXAMINER: Very well, Employer's Exhibit No. 1 will be received in evidence.

* * * *

Q. (By Mr. Tichy) How do you justify this proposal of May 20, 1963, as a premium pay plan?

A. I don't quite understand your question.

TRIAL EXAMINER: What makes your premium pay plan?

THE WITNESS: The company expects a certain volume of production through each spreader crew depended upon the length of time that a spreader crew has been in existence but this premium pay is based on extra skills and effort beyond this expected average. If the crew obtains the averages indicated here for the period of time, which has now been changed to one week, they will receive an increase in hourly rate to $2.50 per hour.

TRIAL EXAMINER: I want to be absolutely clear on that. I take it that under the classified wage scale in the core feeder, they are supposed to receive $2.24 if they satisfy your norm for the receipt of premium pay, rather the core feeder would get $2.50, the core layer $2.29 would get $2.50, the sheet turner rather than getting $2.10 would get $2.50 per hour?

THE WITNESS: That is right.

* * * *

Q. (By Mr. Tichy) Is a glue spreader crew required [fol. 73] to meet the norm established in this premium pay schedule General Counsel Exhibit's No. 3?

A. No, in fact when we intiated this program, we called each crew into the office as well as posting this and

explained the mechanics of the entire premium pay proposal and we told them at that time that this was something they could work to obtain but it was not something that was required if they received it, we would do everything we could to help them obtaining this level, but it was not required.

Q. Do you know of any employees being disciplined, discharged, reprimanded to or for failure to meet the standards set up the May 20 notice, General Counsel's Exhibit No. 3?

A. Definitely not.

Q. Have you checked with your supervisors to determine whether or not anyone has been reprimanded, suspended, disciplined on account of a failure to meet the standards suggested in the May 20 letter?

A. Yes, I have. I have checked with each of the other supervisors to be certain that have not.

Q. I observe that Item #1 on General Counsel's Exhibit 3, the notice of the May 20, states the footage will be computed on a pay-period time basis (every two weeks). That is the manner in which this is done now?

A. No, we initially started this program on a basis of computing the footage every two weeks, but we found that [fol. 74] this was not proving out to be satisfactory and so we changed it to one week period.

Q. Are there any other elements that have been changed, referring to General Counsel's Exhibit No. 3?

A. Yes. The hot press three-man crew who must average 3,750 feet has been changed to 4,000 feet when we added the fourth member to the crew.

Q. Those are the only deviations from the exhibit?

A. Yes.

Q. At the bottom of General Counsel's Exhibit No. 3, being the notice of May 20, it is stated "The Company will do everything possible to assist the crews in obtaining this footage by dividing the stock as evenly as possible, however, the foreman will make all stock decisions." Will you go into that?

A. The many different grades of plywood that are produced require different types and grades of stock. Some of these types of stock will result in higher production

material. The intents of this was to spread the better grades of stock to each of the individual crews so thereby enabling each of them to have an equal opportunity to obtain the footage requirements. We might further explain that we have some types of core that are two-foot wide by four-foot long and we have some types of core that will range from four inches wide to 20 inches wide. Naturally, the pieces that are two foot wide will result in a much higher production than the narrow pieces. This is [fol. 75] attempted to be divided among each of the spreader crews. The responsibility of this as we state relies on the management but we have attempted diligently to keep this as evenly divided as possible. In fact, we have taken cases on a Friday whereby one crew has practically obtained the volume for the entire amount and although it maybe their turn for better grade stock, we have purposely given it to another crew in order to enable them to obtain this volume.

Q. Handing you again Employer's Exhibit No. 1, we see a large number of "no's" indicating that the Swing #3 and the Swing #2 for example, I believe I only see one of each of those. Is there some explanation for that?

A. Yes, the Swing shift crew has proven to be over the past years the shift where new men are hired and the training program is in effect. The men from the swing shift after they have obtained the experience and seniority will then move to the day shift crews wherever a vacancy occurs. This results in the swing shift crews having the more inexperienced people and the day shift people having the more experienced people.

Q. And this transferring from the swing shift to the day shif' is in accordance with the collective bargaining agreement?

A. Yes.

* * * *

[fol. 76] Q. (By Mr. Tichy) During the testimony of the witnesses for General Counsel, we heard some reference to materials being brought by the lift truck affecting this proposed or premium arrangement. What can you tell us about that?

A. Well, this definitely could be the case. We, the company, has recognized this as well as the glue mixing

could affect this and the amount of stock on hand could affect this, so we have indicated and we have practiced that all lost time due to the spreading is not attributed to this premium pay rate in computing the amount of volume. If a spreader crew, for example, have to wait on the lift truck for more than 15 minutes, when the foreman turns in the production time at the end of that shift it is not computed on a full eight hour basis. It is computed on seven and three-quarter hour basis. This has been the case many times when lost time has developed. We didn't feel this was the responsibility or anything that the crews could control so we adopted the policy of subtracting lost time.

Q. Referring to the contract that has been in existence between the two companies and the local union and which has been introduced as General Counsel's Exhibit No. 2, the wage rates, I believe you have already testified to for the core feeder as shown as $2.24 an hour, core layer $2.29 an hour, and sheet turner $2.15 an hour, is that correct?

A. Yes, that is correct.

Q. Now, how does this premium arrangement work [fol. 77] insofar as this wage schedule is concerned?

A. If the crew obtains the volume and meets all the requirements listed in our bulletin, the hourly rate of pay for each one of the individuals on this crew, the four members, will be increased to $2.50 each regardless of the amount that they would exceed the requirements.

Q. In other words, if they would through their special aptitude and the like produce an average of 10,000 core line feet per hour, that is not going to give them any more rate than having made 7,500, is that correct?

A. That is right and will receive the $2.50 an hour.

Q. This $2.50 applies to each member of this particular crew, if I understand correctly?

A. That is right.

Q. Is it possible or has your company paid anything less to a crew feeder than $2.24 an hour as called for in the contract?

A. No.

Q. Is it possible or has your company paid any core layer for any less than $2.29 an hour under this contract?

A. No.

Q. And is it possible for a sheet turner to get less than $2.15 an hour or have you paid any sheet turner less than $2.15 an hour under this contract?

A. No.

Q. On what basis does the company believe that it can [fol. 78] pay the premium rate one week and then go back to the contract rate the next week?

A. On what basis?

Q. Yes.

A. As referred to in the working agreement under Article 17, which states that the premium rate shall not be considered a permanent increase in the rate of that position and may at the sole option of the employer be reduced to the contractual rate.

Q. So as I understand you to be saying, when in order to meet the standard set up in this May 20 bulletin, General Counsel's Exhibit No. 3, you feel there are skills, fitness, and the like which warrant a premium or higher rate, is that true?

A. Yes.

Q. So if they don't meet this, you revert to the contractual rate?

A. That is right.

Q. Was any reference or discussion undertaken in the meetings with the union that led up to the collective bargaining agreement concerning a premium pay system on this order?

A. This was brought out during the March 12 meeting. I specifically remember after a caucus of the members of the union negotiating committee that they returned to the meeting room and Mr. Clavadetscher, who was the Federal Mediater attending these negotiations stated that he felt there were only two issues left to be resolved. One was the union security clause and the [fol. 79] other was the glue spreader rates. At this time I informed the negotiating committee that we were not concerned about the glue spreader crew rates because the company had had under consideration for quite sometime

a premium pay or incentive-type program they were investigating. We had not decided definitely on what type of plan would be applied but we were definitely considering it.

Q. At the time of that meeting had the wage clause that appears in General Counsel's Exhibit No. 2, the contract introduced into evidence, had that wage clause been tentatively agreed to subject to agreement on the entire contract?

* * * *

Q. I am speaking about Article 17. Had that been agreed upon prior to the March 12 meeting?

A. Yes.

TRIAL EXAMINER: If I may interpose. Had it been reduced to writing or was it just an agreement?

THE WITNESS: It had been presented to the negotiating committee and, I believe, it had been reduced to writing.

* * * *

[fol. 80] Q. At the time you were discussing this proposed premium incentive plan which was being discussed but hadn't been specifically determined, were you alluding to or referring to or in any way contemplating the provisions of the wage clause that permitted this employer reserved rights?

A. Very definitely. We felt that with this clause that we would be permitted to pay premium rates such as we have finally adopted.

TRIAL EXAMINER: I believe, Mr. Thomason, if I understand Mr. Tichy's question correctly, he was driving at something slightly different. If he wasn't, then I would raise this question. Your testimony, your present recollection, is that the substance of Article 17 had already been agreed upon and probably, as you now recall, it, reduced to written form by the time of the March 12 meeting.

THE WITNESS: Yes.

TRIAL EXAMINER: Now, when, following this caucus you made these observations that you weren't too concerned about the glue spreader rates because you had this matter of a possible premium plan under consideration.

Did anyone on the management team at that time make any reference to the relationship between your plans and ideas about a premium paid plan and Article 17 in its then tentative form.

THE WITNESS: No, not to my recollection.

Q. (By Mr. Tichy) Now, you heard the testimony [fol. 81] with respect to June 7 and July 15 meetings, you were present at both, were you not?

A. Yes.

Q. And the subject of this premium pay arrangement for the glue spreader crew was discussed at each of these meetings?

A. Yes.

Q. What was the position of the Employer as explained to the union representatives in these two meetings?

A. Basically we explained to them we felt this was permissible under the Articles or under the agreement in Article 17.

Q. And did the union make any effort to your recollection to get into the mechanics of this premium pay plan?

A. None at all. We were only asked to discontinue the practice not to negotiate any changes or any parts of the premium pay clause or notice.

Q. What was the position of the company in concluding its dealing with this request of the union? What was the company's concluding response?

A. That the company felt that we they were within the rights of the agreement to pay this premium rate and we informed the union committee.

Q. You indicated, did you not, that you intended to continue the premium pay under that provision of the agreement?

A. That is true. We were asked specifically if we were going to and we informed them that we were.

[fol. 82] Q. In your negotiating this agreement with the union representatives, did you seek assistance from Mr. Bright?

A. Definitely, yes.

* * * *

Q. (By Mr. Tichy) Tell us who Mr. Bright is.

A. Mr. Bright is a representative of the Timber Products Manufacturers Association of Spokane and he is located in Missoula and he assisted our company in our negotiations and, as you say, he explained the many phrases and clauses in the agreements throughout the area.

Q. He was present at all the meetings?

A. Yes.

* * * *

[fol. 83] Q. And your firm is a member of the Timber Products Manufacturers Association?

A. Yes.

Q. And the association is an industrial and public relations association of timber producers in western Montana and in other locations?

A. Yes.

Q. Did Mr. Bright have any occasion to discuss with you the particular language that is found in Article 17, Paragraph (a)?

A. Mr. Bright informed me that this language was commonly used in other agreements. Now, I don't recall which ones but I also particularly advised Mr. Bright of what the company's policies had been prior to the negotiations with the union and what we desired in this agreement. Then, Mr. Bright in turn would phrase the different paragraphs and articles to negotiate what we desire.

Q. In discussing this particular Article, Paragraph (a) relating to wages, was other—were other premium pay or incentive plans discussed as existed in other locations under comprable language?

A. Yes.

Q. Do you recall specifically one or two that were mentioned, that was mentioned?

* * * *

[fol. 84] A. We were informed by Mr. Bright that Mount Lolo in Missoula was paying an incentive type plan under this same type of an agreement and also, I believe, Stoltze Lumber Company was.

Q. Didn't Mr. Bright in your presence discuss the Mount Lolo situation with Mr. Weller as the representative of the union in one of those meetings?

A. Yes.

[fol. 85] * * * *

CROSS EXAMINATION

Q. The quality of the stock that is presented to the glue spreader crews, does that greatly determine the speed with which they can perform?

A. Yes.

Q. Who determines the quality of the stock?

A. The Employer, the management people.

Q. If there were unskilled men on any given crew as a fill-in for a week, would it be possible for the crew remaining to make its bonus?

A. Yes.

Q. And at that point, the unskilled individual would participate in that?

A. That is true.

Q. And your classified wage scale provides a wage differential between your three categories on the glue spreading crew, the core layer, core turner, and core sheet layer, and that is based presumably on skill?

A. It is based pretty well on skill. We must recognize that these contractual rates were negotiated as being existent throughout the Montana industry, plywood industry. We base them a little differently. In fact, we indi-[fol. 86] cated this to the negotiating committee. We felt some of the rates should be a little closer together.

Q. You would recognize a differential on the skill on the glue spreader crew on these classified rates?

A. Yes.

Q. And as your plan, your premium plan, now applies —strike that.

You would agree, would you not, that the highest paid employee on the glue spreader crew is the core layer at $2.29 and the most skilled on the crew as a category?

A. That would be—no, I wouldn't, not necessarily. I would say his responsibilities are a little more but not

necessarily is his skill any greater and the core layer's skill is not any greater than the core feeder's skill at feeding core or the sheet turner's skill at turning sheets.

Q. Or is the aptitude or ability to effect the bonus system on the crew who has the greatest responsibility of, say, the core layer?

A. Not necessarily. I just completed telling you, possibly one man on the crew that was not experienced but displayed extra effort or exerted extra effort to keep up his end, could result in the other three men or the entire crew obtaining the volume but the special skill of the core layer would not necessarily be any more special.

Q. But he would have greater responsibility?

[fol. 87] A. This was taking into consideration when the contractual rates were negotiated, yes.

Q. So that if the crew makes the bonus for the week, then the person who has the greater responsibility receives the least benefits from the plan, is that correct?

A. They all received equally the same, yes.

Q. If the crew doesn't achieve the bonus because they decided they wanted to loaf for the week, he would receive $2.29, that is the core layer, would he not?

A. That is correct.

* * * *

Q. (By Mr. Stange) If there were someone who was receiving additional premium that had been negotiated between you and the individual over and above the classified wage rate because of his special skills that you would recognize, that too would disappear on this bonus plan?

[fol. 88] A. That is true.

* * * *

TRIAL EXAMINER: I have just one question. You have indicated in your direct examination that during these final meetings with the union representatives when they protested the premium pay plan that they made no effort to raise any questions with respect to the actual operations of the plan or to suggest any basis for complaint in regard to the details of the plan.

THE WITNESS: That is true.
TRIAL EXAMINER: But they objected to it in total?
THE WITNESS: That is right.

* * * *

CROSS-EXAMINATION

(By Mr. Weller)

[fol. 89] * * * *

Q. Referring to this March 12 meeting, I believe you testified following the caucus the union was told something about an incentive plan you had in mind.

A. Yes.

Q. Do you recall about what time of day that caucus was?

A. It was very close to the end of the meeting, towards the end of the meeting. I don't recall how long the meeting lasted. It would be difficult to determine the exact time, but I remember it was right at the end of the meeting and after there was more caucuses. This was—after this, why, we adjourned the meeting.

[fol. 92] * * * *

REDIRECT EXAMINATION

* * * *

[fol. 93] Q. (By Mr. Tichy) One thing I was referring to in your testimony, Mr. Thomason, as we went through what the glue feeder does and what the core layer and so forth, the stock that the sheet turner handles has to go over the head of the core layer, is that correct?

A. That is correct.

Q. So the core layer has got to be alert and skillful or he is going to get hit in the head by the sheets, isn't that true?

A. Yes, and also damage the sheet.

Q. And also the sheet turner has to be sure to get it up over his head or they are going to be fouling things up?

A. That is right.

Q. Now, the area in which you responded to counsel for the General Counsel on the quality of the stock coming to each glue spreader crew, did I understand you earlier to go into this matter of trying to average it out so each crew would be varied or have you already testified to this?

A. Yes, and this is what is done.

Q. So this area of the quality of the stock is normally equal between the crew during the course of a period of time?

A. Yes.

* * * *

RECROSS-EXAMINATION

Q. (By Mr. Stange) Who makes the decision for determining what crew gets which stock?

[fol. 94] A. The foreman.

* * * *

A. I have production records that are turned in each morning that from the previous day give me the type of panel that is produced on each spreader during the day and we make particular notice to be certain that each spreader gets their turn at the higher classified stock and grades.

Q. I am not talking about that particular problem. I am talking about the quality of the material that is coming to the individual. If it is short or the word used by Mr. Tichy, feathered or something like this. This wouldn't be reflected in the quality or the type of material they were running there on your records, would it?

A. Yes, it would.

Q. How?

A. Because different grades of materials take selected stocks and these selected stocks result in higher quality core binding and less chances for any tapering or broken [fol. 95] edges or defects to be involved in this particular panel production.

Q. But at the time they are coming through there are some quantities of the stock that are coming through, say, grade one finding plywood that are not as good as other quantities that come through.

A. Of grade one?

Q. Yes.
A. That is true, yes.
Q. And you record wouldn't reflect within the grade?
A. No.
Q. And who makes the decisions as to who gets the quality wood?
A. The foreman makes that decision.
Q. You wouldn't have any personal knowledge of how he makes his decision?
A. No.
Q. (By Mr. Tichy) Have you checked with the foreman to insure they are carrying out this promise in the May 20 letter which states that the company will do everything to help a crew in obtaining their quota?
A. Repeatedly.
Q. You have checked that?
A. Yes.
Q. So you are satisfied in your mind that there is a fair distribution?
A. As fair as possible, yes.

[fol. 96] * * * *

DIRECT EXAMINATION

Q. (By Mr. Tichy) Your name is Dexter Bright?
A. Yes.
Q. Your address?
A. Post Office Box 1478, Missoula, Montana.
Q. And your occupation?
A. I am staff member for Timber Products Manufacturers Association, probably more commonly called a fieldman due to the fact I do reside out of the general office and operate in pretty much of a given area, namely, Montana.
Q. And in the course of your duties, did you have any work that you did for and at the request of the C & C Plywood and Veneers Incorporated?
A. Yes, very definitely.
Q. And would you tell us what that work was?
A. Well, following the certification by the National Labor Relations Board of Local 2405 as the collective bargaining agent, of course, we had the task before us of

[fol. 97] negotiating the contract and Mr. Thomason of the company, I would say, utilized the experience that I had had in the area and knowledge of the other contracts to assist him in negotiating this contract and wage scale.

Q. You have negotiated contracts and wage scales in other plants, have you not, over the years?

A. Well, yes, particularly the initial contract where a company has not, at least in their present location as was the case with C & C, previously had a contract. Maybe as time goes on, I may not be so involved in succeeding contracts.

Q. You were present through all of the meetings that led up to this collective bargaining agreement in this situation?

A. Yes, I was present in all of the meetings.

Q. You were present in this hearing room since the hearing began, isn't that true?

A. Yes, that is true.

Q. And you heard Mr. Thomason's testimony with respect to his statements concerning a discussion of a proposed incentive or premium arrangement for glue spreader crews?

A. Yes. You asked me if I heard his testimony?

Q. Yes.

A. Yes, I have heard that testimony.

Q. Do you know of your own knowledge whether or not the union committee was present at the time of the discussion to which he testified?

[fol. 98] A. Yes, I do. It was the March 12 meeting and, of course, the conciliator moved back and forth between the parties as is their customary way and therefore the question arose in my own mind as to whether or not the union committee was in the room at the time. I have clearly and uniquivocally a recollection of Mr. Thomason talking about putting an incentive plan into effect so I wanted to satisfy myself on the basis of recollection and past records of the meetings as to exactly what happened. I have those original minutes which I don't want to refer to without the permission of the Trial Examiner but they show, if I may go on, they show that the company was caucusing with Mr. Carl Clavadetscher,

the Commissioner of Concilliation. My custom is to mark a joint meeting beginning at the end of a caucus at a certain time when we go back together at a joint meeting for our own records which usually are never transcribed or anything.

Well, then, the minutes show that after this private caucus that Mr. Clavadetscher called the union committee back with us so we had a joint meeting just prior to the recess of the meeting and my minutes show we recessed at 5:10 p.m. We started at 3 p.m. and we were only together, that is, the two committees representing the company and the union, in joint meeting for about 15 or 20 minutes and it was during that period of time that Mr. Thomason made a statement with regard to the pay for these glue spreader crews that the company was working on an incentive or bonus or premium system—I don't [fol. 99] remember the exact wording that he used—to better compensate these people on the basis of their abilities and there was no discussion of the specifics of the plan as to what it would be and my recollection without being asked the question by counsel is I don't remember any comment about it at all from the union committee. They didn't say they opposed it or accepted it and there was no discussion about what the plan would contain.

TRIAL EXAMINER: Mr. Bright, I take it from the general tenor of Mr. Tichy's examination prior to your last response that it would be interesting to determine your present recollection as to whether or when this subject came up during this final joint meeting on March 12 in addition to saying the company had this in mind, was any reference made in the presence of union committee to the fact that what the company had in mind was something similar to what was being done at certain named other companies?

THE WITNESS: Well, the certain other named companies were not plywood companies and without belaboring the point, there are not many plywood plants in Montana. Two of the ones I used as a basis for advising to the best of my ability Mr. Thomason on the question which he raised were not plywood producers. One was the Mount Lolo Lumber Company and what had happened

there and the reason I advised Mr. Thomason as I did, namely, to the effect that I thought he had under the contract the privilege of doing what he was contemplating [fol. 100] doing. This is what happened. The late Paul Delaney of the Mount Lolo Lumber Company, proposed to put into effect in his operation a separate per thousand basis of payment for car loader rates from footage one. He called me up. He said, I propose to do this and I propose to let a contract, to let a contract, was the way he put it, to two of his car loaders, who are his top loaders, a man named Max Granmo and Max Drake or Dick Johnson. I am not sure which because the names are so similar but that is what he proposed to do. We had a contract with the local and we had negotiated an hourly rate for car loaders and I advised Mr. Delaney I didn't think he would be within his right to do that. He said, "I want some kind of an incentive. How can I do it?" The union agent which happened to be a Mr. Warren Cork who represents the local, that particular local there in Missoula, and had objected to the company doing that and I told him, "I didn't think he would have a true independent contractor relationship." It was actually a legal problem but I felt on the basis of laymen's experience in bargaining and so on, we wouldn't be justified in doing that. He said, "How can I set up an incentive system to the best of my ability?" The only way, I told him, you can do it is set a norm which he did, 40,000 feet, and he said: Will you work out a formula for me so if I pay a given amount, X cents per thousand for all lumber loaded above 40,000 feet in a day that I arrive at about the same amount of money as the dollar fifteen cents per thousand straight that I proposed to pay." So [fol. 101] I did that, and he ended up with setting the 40,000 feet norm for 8 hours and no overtime to be worked because of high earnings. He wanted to avoid that and to pay 80 cents per thousand to each man for each thousand feet loaded in excess of 40,000 feet in eight hours to be computed on a daily basis. It so happened that in that instance I reduced that all to writing which might not always happen but the company has the original and I have the copy in my files in Missoula. I wrote

this entire matter up and laid it out to the company as to what I thought they could do of they guaranteed the hourly rate. At no time should they pay less than the hourly rate but for over and above this norm that they could reward for the extra work and my basis for that was in the wage clause there is a very similar language to what we have involved here with the execption that that contract language did not permit the elimination of a premium once given to the man receiving it that if you replace the man with a new man and you felt he did not exemplify the same merit and abililty, efficiency, and so on he would not necessarily get it but so long as the present man stayed on the job, he would continue to get the premium. Other than that, they were similar.

TRIAL EXAMINER: In effect that experience that you have just described with respect to Mount Lolo had been pretty well explained to Mr. Thomason?

THE WITNESS: In extreme detail.

[fol. 102] TRIAL EXAMINER: Now, the immediate question is on March 12 when Mr. Thomason or rather after the conciliator had called you all back together at a joint meeting, sometime shortly before 5:10 p.m. a reference was made to C & C Plywood giving some consideration to a premium pay plan, was the name of Mount Lolo mentioned by anyone, you, or Mr. Thomason?

THE WITNESS: My recollection will not permit me to say, Mr. Trial Examiner, that it was at that meeting because I don't recall that but at some meeting during this series of meetings, Mount Lolo was mentioned in connection with the payment of a premium rate based on production. I remember very clearly because Mr. Weller's response was very brief. He was acting as the chief spokesman and his response, as I recall, was very brief and he made some comment about it was something that was in effect for a long time or before the union contract or something like that. I don't remember exactly what he said so we didn't debate the Mount Lolo thing with the union but it was mentioned in one meeting at which the union was present.

TRIAL EXAMINER: I have nothing further.

Q. (By Mr. Tichy) Mr. Bright, is it customary for you to keep notes of these meetings in which you attend either as a spokesman or co-negotiator?

A. Oh, yes, very definitely. In fact, I never destroy them and I have minutes on all 11 of the C & C Plywood meetings.

Q. Are those minutes, as you call them, reduced to [fol. 103] writing at the meeting or is this something you wait until you get back to your office and write up?

A. Oh, no, they pretty well speak for themselves—the scribble. They are written at the time. They are very seldom transcribed. One company over the years wanted them transcribed but other than that, we never transcribe them. We leave them in the original form.

Q. Do you have in your possession the minutes of the meeting of March 12, 1963?

A. Yes.

Q. At this time I would ask you to read that portion of your minutes exactly as you have it there beginning with Mr. Clavadetscher coming to the—

* * * *

A. I should comment that this meeting started at 3 p.m. in the company's office. It was recessed at 5:10 p.m. My notes consist of three pages of longhand penciled notes. At the top of page 3 it says "Company caucus ended 4:45 p.m. Clavadetscher went back to union at 5 p.m. Union and company jointly 5 p.m. Clavadetscher: Union will recommend a dated union shop and make a [fol. 104] provision for students and incorporate present rates in effect on spreader crews."

"Company position unchanged. Company is working on an incentive plan for spreader crews under premium clause."

"Weller was insistent on union shop. Meeting recessed subject to call of either party through F.M.&C.S. or by call of FM&CS." I don't know why I repeated. "Recessed 5:10 p.m."

* * * *

MR. TICHY: At this time, Mr. Trial Examiner, I would propose to stipulate that during the period testified to by Mr. Bright, the following clause appeared and con-

tinued to appear in the collective bargaining agreement of the Mount Lolo Lumber Company, Inc., Missoula, Montana, and Local Union No. 2685, Lumber and Sawmill Workers, AFL-CIO. The clause reads as follows:

"Nothing in this agreement shall be construed as to prevent the employer from voluntarily advancing any wage rate or scale; but the advance of any individual rate or scale to reward a particular employee for some special [fol. 105] fitness, skill, aptitude, or the like, shall not be considered a permanent increase in the rate or scale of that position after it has been vacated by a particular individual to whom the increase was granted."

MR. STANGE: May I ask what the materiality is, what are we getting at here so we can save some time?

MR. TICHY: To indicate the clause there used comparable language to the clause here and that further, we have for all practical purposes a synonymous situation in the Mount Lolo Company except you have a lumber mill and here a plywood plant.

MR. STANGE: I don't think that, if, for example, that was a violation, if it is a violation here and a violation there and nobody did anything in that instance, it has any bearing on this particular situation. The question is whether there is a violation under the terms of this agreement and based upon the bargaining history whether there is a violation of Section 8(a)(5). I don't see why we need get into that.

MR. TICHY: This language is common to several contracts in western Montana. It is comparable, not identical, and this is going on in other plants so there is every reason to assume the parties, Mr. Weller is a party to all of these contracts, understanding this. So why are we faced with an unfair labor practice situation in a condition that occurs elsewhere.

[fol. 106] * * * * *

MR. TICHY: Do you stipulate to this statement I put in in regard to or concerning this clause being in existence during the period discussed by Mr. Bright?

MR. STANGE: I will so stipulate.

TRIAL EXAMINER: The stipulation is noted.

Q. (By Mr. Tichy) With respect to this Mount Lolo situation, these car loading crews are made up of how many individuals or employees?

A. Each crew is made up of two employees. There are always at least one crew, often two crews, and occasionally three crews in that particular instance. As a result this is a situation in which it is, you might say, the crew effort that gets the premium at Mount Lolo.

A. Two men have to work together in order to load the lumber.

Q. Then, I believe Mr. Thomason also testified you advised him about the Stoltze Lumber Company comparable situation?

A. Well, yes, there involving only one employee, that is, to my knowledge. There was a similar situation there where the company pays 25 cents an hour premium to the head sawyer in the sawmill if they exceeded 80,000 feet cut per day on a monthly basis and, of course, there [fol. 107] again it is done, at least the company feels it is done, on the basis of their wage clause and payment of a premium to the sawyer. I realize ordinarily the witness answers to the question put to him but there is one probably important thing on this Mount Lolo thing I didn't get finished with, if you are interested in it.

TRIAL EXAMINER: I don't think I am really.

MR. STANGE: I will object. This is getting on and on and I fail to see the relevance.

TRIAL EXAMINER: The only thing that interested me in relation to the Mount Lolo situation was whether there is any indication that a change in the nature of a premium rate plan was installed in Mount Lolo following the adoption of a change with comparative language. Mr. Tichy has covered that. What the weight of that will be in my determination of this particular, I am expressing no opinion now but I saw a possible basis for considering that to be relevant. The details of the Mount Lolo situation I permitted you to expand because in the process of giving us the details you gave us the relevant material, but a lot of the details is of little materiality with the problem now in this proceeding.

THE WITNESS: I don't want to say it on the record,

but I cleared that with the union. That is the thing I didn't get out in my testimony.

Q. (By Mr. Tichy) The union acquiesced?

A. I have definitely cleared that transaction with Warren Cork.

[fol. 108] * * * * *

Q. (By Mr. Tichy) Turn now to the meeting of June 7 and July 15, 1963. You were present when Mr. Thomason testified. Do you concur in his testimony or do you have any different or additional statement to make?

A. No, I concur generally. I realize no two people see the thing identically but I concur generally in Mr. Thomason's testimony, particularly, with regard to the fact that the union came in in effect saying that the company didn't have the right to do what they did with regard to this incentive program under the terms of the contract and we expressed to the union why we thought the company did have the right and the union did not propose any alternative except to discontinue it and they didn't ask us to discontinue it.

* * * * *

MR. TICHY: At this time the Employer would pro-
[fol. 109] pose a stipulation that the collective bargaining agreement existing between the Stoltze Lumber Company at Columbia Falls, Montana, and Local No. 2797 of the Lumber and Sawmill Workers, AFL-CIO contains the following provision:

"Nothing in this agreement shall be construed as to prevent the Employer from paying a premium rate in excess of the agreed upon minimum scale to reward special fitness, skill, aptitude, or the like."

I further propose this stipulation read that that provision has been in existence at Stoltze Land and Lumber Company for at least three years, conceivably longer and that it has a bearing with regard to Mr. Bright's testimony on the special arrangement at Stoltze Land and Lumber Company.

TRIAL EXAMINER: I take it on the basis of our discussion off the record, Mr. Stange, that you would

press the same point with respect to the immateriality or irrelevance of this matter?

MR. STANGE: Yes.

TRIAL EXAMINER: On the basis of the representations which I made and the observations which I made when the point was raised with respect to the Mount Lolo contract, I am going consistently to rule that that particular matter covered by the stipulation is sufficiently relevant and material to warrant its receipt for the record and if that is the only basis of your objection, I would [fol. 110] note the stipulation for the record and overrule that objection.

MR. TICHY: At this time, Mr. Trial Examiner, we wish to ask you to take judicial notice of the definitions of the following four words and we encourage the use of the large Webster's unabridged Merriam dictionary. The words are "premium", "aptitude", "skill", and "fitness".

TRIAL EXAMINER: Without at the moment knowing precisely what I will discover, I will state for the record that I propose to consult the dictionary with respect to these words.

* * * *

MR. TICHY: At this time may it please the Hearing Officer, the Employer wishes to renew its motion to dismiss, feeling now that the additional evidence adduced clarified any conceivable omissions that may have existed in General Counsel's case to establish the Employer's motion and the Employer will rest.

TRIAL EXAMINER: Very well. I am going to reserve ruling on the motion. * * *

* * * *

[fol. 113]

GENERAL COUNSEL EXHIBIT No. 2

Plywood, Lumber & Sawmill Workers
Local Union No. 2405
United Brotherhood of Carpenters
and Joiners of America, AFL-CIO
Kalispell, Montana

C & C Plywood Corporation
Kalispell, Montana And
Veneers, Inc.
Kalispell, Montana

WORKING AGREEMENT

Whereas, the parties hereto desire to establish the conditions under which employees shall work for the Employer during the term of this Agreement, and desire to regulate the mutual relations between the parties hereto. Now, therefore, this Agreement entered into this 1st day of May, 1963, by the C & C Plywood Corporation, and Veneers, Inc., both of Kalispell, Montana, hereinafter called the Employer by its authorized agents and Plywood, Lumber and Sawmill Workers Local Union No. 2405, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, also of Kalispell, Montana, hereinafter called the Union, by its authorized agents, Witnesseth, that in consideration of the mutual promises made in good faith by both parties to this Agreement, they do hereby agree with each other, to-wit:

Article I

UNION RECOGNITION

The Employer agrees to deal with and recognize the Union as the sole collective bargaining agency with respect to wages, hours, and other terms and conditions of employment for all production and maintenance employees of the Employer at its veneer and plywood plants near Kalispell, Montana, excluding office clerical employees, guards, professional employees, and supervisors as defined in the Act.

Article II

UNION MEMBERSHIP

A. Present employees who pay monthly Union dues to Local No. 2405 for the month of May, 1963, shall as a condition of continued employment continue to tender the periodic membership dues during the term of this Working Agreement.

B. New employees hired after date of execution of this Working Agreement shall have the privilege of joining or not joining the Union during the term of this Agreement shall, as a condition of continued employment, continue to tender the periodic membership dues during the term of this Working Agreement.

C. It is mutually agreed that in no instance shall employees who have voluntarily joined the Union and who therefore are required by this Article to maintain Union membership as a condition of continued employment, be required to continue Union membership at an earlier date than on or after the thirtieth (30th) day following date of their most recent employment by the Employer, or the effective date of this Agreement, whichever is the later, and such employees may be required to tender only the periodic dues uniformly required as a condition of retaining membership in the Union.

[fol. 114] D. The Union may request the Employer to discharge an employee for failure to maintain membership dues as provided in this Article, except that no discharge shall be requested where the employee has failed to pay his dues for a period of six (6) calendar months or more. All such requests to the Employer shall be in writing, with a copy served on the employee and shall include written evidence offered in support thereof. Within fifteen (15) days after receipt by both the Employer and employee of such requests, and after the Employer has held a hearing if requested by the affected employee, the Employer shall determine and in writing notify the employee and the Union of its findings. If such findings be adverse to the employee he shall thereupon be discharged effective as of the commencement of his next shift.

E. The Union shall indemnify and waive the Employer harmless against any and all claims, demands, suits, or other forms of liability that shall arise out of or by reason of action taken or not taken by the Employer at the request of the Union for the purpose of complying with any of the provisions of this Article.

Article III

HIRE AND DISCHARGE

A. The Employer shall have the sole and exclusive right to hire, discipline, suspend or discharge any employee. All new employees shall be hired on a trial basis for a period which shall consist of sixty (60) days actually worked by the employee, either continuously or with intervals between. During said trial period, the Employer shall have the sole right to discharge such new employee.

B. After sixty (60) cays of actual work as above referred to, in event that an employee shall be suspended or discharged from his employment and he believes that he has been unjustly dealt with, such suspension or discharge shall remain effective, but shall constitute a case to be handled in accordance with the terms of Article V—Grievances. Such grievance shall be taken up with the Employer within two (2) working days from the date of suspension or discharge or shall be considered waived. If upon consideration of the matter by the Employer and Union it is agreed that an employee was unjustly suspended or discharged and should be reinstated, such reinstatement shall be in accordance with the terms of settlement arrived at between the Employer and Union.

Article IV

SHOP COMMITTEE

A. The Union members in the employ of the Employer shall select a committee consisting of four (4) employees to be Shop Committeemen and Shop Stewards, with two (2) of these committeemen to be employees of C & C Plywood Dorporation and two (2) of these committeemen to be employees of Veneers, Inc., and the committeemen

to represent employees in the respective plant in which they work. To be eligible for membership on the Shop Committee a person must be a citizen of the United States, must be and remain employed by the Employer and must [fol. 115] have been so employed for at least one (1) year immediately prior to his selection as a member of the Shop Committee. The shop committee shall represent the Union in all matters affecting the performance and administration of this Working Agreement, with the understanding that one (1) committeeman from each plant on the day shift and the swing shift for a total of four (4) committeemen, when the plant is operating a day and swing shift, shall be designated as Shop Stewards. The Union agrees to keep the Employer informed at all times as to the names and addresses of employees serving as Shop Committeemen and Stewards.

B. The Union agrees to also keep the Employer informed at all times as to the names and addresses of the President, Vice President, Recording Secretary and Business Representative of LSW Local No. 2405.

Article V

GRIEVANCES

A. Should there be any dispute or grievance arise under this Agreement, it shall be handled in the following manner:

(1) The employee or employees concerned shall continue to work, except in the case of suspension or discharge. The dispute or grievance shall first be taken up with the Plant Superintendent by the Shop Steward. If no settlement is reached within seventy-two (72) hours, the grievance shall then be taken to higher management of the Employer, by the Shop Steward and/or the Plant Superintendent for settlement, at which time the Union may call in its Business and/or Union Representative(s). If a satisfactory settlement is reached between the Shop Steward and Plant Superintendent or higher management, such settlement shall be binding on all parties concerned. Unless such grievance, dispute or complaint is presented

to the Plant Superintendent within three (3) working days after it arises it shall be waived.

(2) Any issue, grievance or dispute arising under this Working Agreement which is not settled at the expiration of ninety (90) calendar days following the date upon which such issue, grievance or dispute arises shall be considered waived and nullified.

Article VI

STRIKES AND LOCKOUTS

A. During the life of this Agreement, no strike shall be authorized or caused by the Union or sanctioned by the employees of the Employer or members of the Union, and no lockout shall be ordered by the Employer until every peaceable method of settlement of the difficulties have been tried, including compliance with the provisions of Article V—Grievances and the Federal Mediation and Concilation Service has been called in and has attempted to settle the dispute and failed to do so. No strike shall be called until approval is registered by secret ballot of a majority of the Union members then currently on the payroll, the Union has certified in writing the results of the balloting to the Employer, and the Employer has been notified in writing at least ten (10) days in advance of the effective date advising the date on which the strike is to start.

[fol. 116] B. In the event that a work stoppage unauthorized by the Union occurs within the operations covered by this Agreement the employees responsible therefore may be discharged forthwith by the Employer without protest and/or recourse by the Union and the latter shall in no way be deemed responsible for such unauthorized stoppage. The Union agrees that it will not sanction or recognize "stranger" (not an employee) and/or jurisdictional pickets, and/or strikes affecting the Employer and/or employees of the Employer.

C. The parties recognize that in the event of any work stoppage it is essential for the interests of both the parties that damage and loss be minimized so that, at the

conclusion of the stoppage, full employment and full production will not be delayed and therefore it is agreed that before and during such stoppage:

(1) Machinery, materials and equipment must be prepared for idleness, and products produced before the work stoppage must be protected against deterioration.

(2) Plant, machinery, materials, equipment and property must be adequately guarded and protected. The Union agrees not to interfere with the Employer's activities in carrying out these intents and purposes and agrees to allow sufficient employees selected by the Employer and/or such other personnel as selected by the Employer to carry out said intents and purposes.

Article VII

UNION ACTIVITIES

There shall be no discrimination against employees because of their Union activities. There shall, however, be no Union activities, either for or against, during working hours, except that the Shop Steward may attend to complaints reported to him, provided normal operation and efficiency of the plant is not interfered with.

Article VIII

HOURS OF LABOR

[fol. 117] • • • •

Article IX

HOLIDAYS

[fol. 119] • • • •

Article X

CALL TIME AND LOST TIME

• • • •

Article XI

CLASSIFICATION OF EMPLOYEES

[fol. 120] * * * * *

Article XIII

PROMOTION AND FILLING HIGHER VACANCIES

In filling vacancies in the higher classifications, promotions shall be based upon ability, efficiency, experience and seniority. Ability, efficiency, and experience being sufficient, seniority shall prevail, the Employer to be the judge, subject to the provisions of Article V—Grievances.

Article XIII

SENIORITY

* * * *

[fol. 122] **Article XIV**

LEAVES OF ABSENCE

* * * *

Article XV

SAFETY COMMITTEE

* * * *

Article XVI

VACATIONS

[fol. 124] * * * *

Article XVII

WAGES

A. A classified wage scale has been agreed upon by the Employer and Union, and has been signed by the parties and thereby made a part of the written agreement. The Employer reserves the right to pay a premium rate

over and above the contractual classified wage rate to reward any particular employee for some special fitness, skill, aptitude or the like. The payment of such a premium rate shall not be considered a permanent increase in the rate of that position and may, at sole option of the Employer, be reduced to the contractual rate at such time as the Employer feels that the employee no longer merits the premium, except that no present employee on the date of signing of this original Working Agreement shall suffer a wage reduction as a result of this Agreement.

B. It is mutually agreed that the attached classified wage scale shall be effective upon the signing of this Working Agreement with wages closed for the term of that agreement. Such wage closing shall not be considered so as to prevent negotiations to establish applicable rates for new job classifications or to adjust rates for job classifications on which the Employer and Union agree there is a substantial change in job content following the date of this Agreement.

Article XVIII

HEALTH AN WELFARE

[fol. 125] • • • •

Article XIX

WAIVER OF DUTY TO BARGAIN

The parties acknowledge that during negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter of collective bargaining, and that the understanding and agreements arrived at [fol. 126] by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the Employer and Union, for the life of this Agreement, each voluntarily and unqualifiedly waives the right and each agree that the other shall not be obligated to

bargain collectively with respect to any subject matter not specifically referred to or covered in this Agreement, even though such subjects or matters may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement.

Article XX

UNION BULLETIN BOARD

* * * *

Article XXI

TERMINATION

A. This Agreement when signed by the qualified representatives of both parties shall remain in full force and effect to (but not including) November 1, 1968, and from year to year thereafter, until either party notifies the other in writing of a desire to change, modify or terminate this Agreement at least sixty (60) days prior to November 1, stating the changes desired.

In Witness Whereof, the parties hereto acting by and through their duly authorized officials and representatives have executed this Agreement this 1st day of May, 1968, at Kalispell, Montana.

Plywood & Lumber & Sawmill Workers
Local Union No. 2405, United Brotherhood of Carpenters & Joiners of America

By /s/ HARRY S. HUNT
President

By /s/ JOHN R. WILLIAMSON
Recording Secretary

By /s/ AUGUST F. STEINER
Committeeman

By /s/ MORTON L. HOYE
Committeeman

By /s/ JACK CORNELL TAYLOR
Committeeman

Montana Carpenters District Council
Lumber & Sawmill Workers

By .....
Executive Secretary

C & C Plywood Corporation
Kalispell, Montana

By /s/ C. O. THOMASON
General Manager

By /s/ R. W. ELLENBURG
Witness

Veneers, Inc.
Kalispell, Montana

By /s/ C. O. THOMASON
General Manager

By /s/ R. W. ELLENBURG
Witness

[fol. 127] CLASSIFIED WAGE SCALE

The undersigned parties hereto agree that the contractual wage scale as referred to in Article XVII—Wages of the Working Agreement in effect between them, is as follows:

C & C PLYWOOD CORP.

JOB CLASSIFICATION	RATE PER HOUR
Dryer Feeder	$2.00
Dryer Grader	2.12
Tape Machine Operator	2.07
Tape Machine Off-Bearer	2.00
Core Feeder	2.24
Core Layer (2)	2.29
Sheet Turner	2.15
Cold Press Operator	2.17
Glue Mixer	2.07
Skinner Saw Breaker	2.00
Skinner Saw Feeder	2.12
Cut-Off Saw Feeder	2.08
Panel Grader	2.12
Panel Patcher & Grader	2.07
Sander Feeder	2.02
Sander Grader	2.12
Jitney Driver	2.07
Clip Saw Operator	2.05
Clip Saw Off-Bearer	2.00
Cleanup & Watchman	2.00
Jointer Operator	2.07
Car Loader	2.12
Raimann Machine Operator	2.02
Glue Cleanup	2.00
Millwright	2.475
Carpenter	2.475
Electrician	2.525
Training Period Sixty (60) Days	1.87

A night shift wage differential of three (03) cents and five (05) cents per hour in addition to the contractual rates shown herein shall be paid to employees on the swing (second) shift and graveyard (third) shift respectively * * *

* * * *

[fol. 128] Wages are closed for the term of the Working Agreement of which this is a part, subject to opening

in the same manner as provided in Article XXI—Termination of the Working Agreement.

* * * *

[fol. 129] CLASSIFIED WAGE SCALE

The undersigned parties hereto agree that the contractual wage scale as referred to in Article XVII—Wages of the Working Agreement in effect between them, is as follows:

VENEERS, INC.

JOB CLASSIFICATION	RATE PER HOUR
Log Lift Truck	$2.27
Vat Jitney	2.17
Block Sawyer	2.15
Barker Operator	2.22
8' Lathe Spotter	2.07
8' Lathe Operator	2.52
8' Clipper Operator	2.17
Green Chain Grader	2.05
4' Deck Saw	2.02
4' Lathe Spotter	2.00
4' Lathe Operator	2.40
4' Clipper Operator	2.15
Green Chain Off-Bearer	2.02
Boiler Fireman	2.07
Jitney Driver	2.07
Cleanup & Watchman	2.00
Millwright	2.475
Carpenter	2.475
Electrician	2.525
Knife Grinderman	2.22
Training Period Sixty (60) Days	1.87

A night shift wage differential of three (03) cents and five (05) cent per hour in addition to the contractual rates shown herein shall be paid to employees on the swing (second) shift and graveyard (third) shift respectively * * *

* * * *

[fol. 181] GENERAL COUNSEL EXHIBIT No. 3

C & C PLYWOOD CORP.

May 20, 1963

GLUE SPREADER CREW PREMIUM PAY

This premium pay schedule will be tried for the next couple of months to determine how it will work for all concerned.

Core feeders, core layers, and sheet turners only will benefit from this premium pay.

The conditions are, as follows:

(1) The footage will be computed on a pay-period time basis (every two weeks).

(2) Every member of the spreader crew will receive $2.50 per hour if footage is achieved.

(3) This rate will apply to over-time also, but only to the time worked on the spreader.

(4) The cold press spreaders must average 7,500′ core-line basis per hour.

(5) Hot press three-man crew must average 3,750′ core-line basis per hour.

(6) Smoke-times must be considered as time worked.

(7) Rejects must remain at 5% or less for the period.

(8) The Company will do everything possible to assist the crews in obtaining this footage by dividing the stock as evenly as possible, however, the foremen will make all stock decisions.

(9) A complete report of the footage averages and reject percentages will be posted at the end of the payroll period.

[fol. 132] GENERAL COUNSEL EXHIBIT No. 4

CARPENTERS LOCAL UNION NO. 2405

(PLYWOOD, LUMBER AND SAWMILL WORKERS)

United Brotherhood of Carpenters and Joiners of America
AFL-CIO

Kalispell, Montana

Kalispell, Montana
P. O. Box 201

May 27, 1963

Mr. C. O. Thomason, General Manager
C & C Plywood Corp. and Veneers Inc.
Route 1, Sunset Drive
Kalispell, Montana

Dear Mr. Thomason:

Pursuant to Article IV of the Working Agreement, this is to advise that the President of Local 2405 is Harry S. Hunt, Route 3, Kalispell, Montana; the Vice President is E. J. Deney, 1310-5th Avenue East, Kalispell, Montana; the Recording Secretary is John R. Williamson, P. O. Box 201, Kalispell, Montana, and the Business Representative is the writer, P. O. Box 201, Kalispell, Montana.

The Shop Committee is, as previously, Morton L. Hoye, August Steiner and Jack C. Taylor.

This is also to request a meeting with your representatives for the purpose of discussing your notice of May 20, 1963, headed "Glue Spreader Crew Premium Pay." We do not consider this to be premium pay within the meaning of Article XVII, but rather a change in wages made dependent upon a production basis rather than hourly rates agreed upon with the Union. As a matter of fact while we are perfectly willing to discuss increasing the hourly rates, or to the companies putting into effect premium hourly rates, we do not consider the subject of production bonuses, or wage rates based upon production standards, to be properly open for negotiations at this time.

Looking forward to meeting with your representatives at the earliest possible time.

Very truly yours,

/s/ Robert C. Weller
ROBERT C. WELLER, Business Representative
Carpenters Local Union 2406
(Plywood, Lumber and Sawmill Workers)

RCW:ar

cc: Dexter Bright

[fol. 188] GENERAL COUNSEL EXHIBIT No. 5

PLYWOOD CORP.

PLYWOOD MANUFACTURING

Route 1—Sunset Drive—Phone 756-5024—
Kalispell, Montana

May 31, 1963

RECEIVED
JUN 1 - 1963
Mont. Dist. Council
L. & S. W.

Carpenters Local Union No. 2405
P. O. Box 201
Kalispell, Montana

Attn: Mr. Robert C. Weller
Business Representative

Genlemen:

We acknowledge receipt of your letter dated May 27, advising us of the officers and shop committee of Local 2405.

With regard to your request for a meeting for the purpose of discussing our May 28th notice relative to the glue spreader crew premium pay, we wish to advise you that we can meet on Friday, June 7, at 3:00 P.M. at the Company office. Please advise, by return mail, if this date will be satisfactory.

Very truly yours,

C & C PLYWOOD CORP.

/s/ C. O. Thomason
C. O. THOMASON
General Manager

CCT: lps

[fol. 184] GENERAL COUNSEL EXHIBIT No. 6

MONTANA CARPENTERS DISTRICT COUNCIL
(LUMBER AND SAWMILL WORKERS)

United Brotherhood of Carpenters and Joiners of America
AFL-CIO

June 11, 1968

C & C Plywood Corporation
and
Veneers, Inc.
Route 1, Sunset Drive
Kalispell, Montana

ATTENTION: Mr. C. O. Thomason

Gentlemen:

It is our understanding you were to be notified in writing of our position on certain grievances that were discussed with you Friday, June 7, by Allie Cole and members of the Plant Committee.

It remains our position that Lloyd Bernardi was, and is, entitled to vacation with pay June 1, 1968, or any date later than June 1, 1963, to and including December 15, 1963. This would not be true of all employees, but we are informed that Mr. Bernardi had attained 8 years of continuous employment by June 1, 1963, and therefore, the date of his vacation could be any date beginning June 1 and ending December 15, 1963. There is nothing in the contract that gives the employer the right to arbitrarily select the date of any employees vacation. The contract does provide the employer the option of granting pay in lieu of the second week. However, the termination of Mr. Bernardi's employment obviously voided that option.

In order to keep the record clear we do not consider the unilateral changing of agreed upon hourly wage rates to a method of computing wages by a different method to be

proper either under the contract or under statutes regulating collective bargaining relationships, and we further object to the adjusting of employees grievances under the contract or the discussions of employee grievances without a representative of Local 2405 being given the opportunity to be present.

It appears that a further meeting, or meetings, will be necessary to discuss these items and we will attempt to comply with any suggestion you might have for the time and place of such a meeting.

Very truly yours,

ROBERT C. WELLER, Executive Secretary
Montana Carpenter's District Council
Representing Local Union 2405

RCW: ar

cc: Dexter Bright
Local Union 2405

[fol. 135] EMPLOYEE'S EXHIBIT No. 1

PREMIUM PAY
Tabulation by Crews
C & C Plywood Corp.

PERIOD AFTER INAUGURATION OF PLAN

Week of	Day #1 4 Men	Day #2 4 Men	Day #3 4 Men	Day #4 No. Men	Swg #1 4 Men	Swg #2 4 Men	Swg #3 4 Men	Swg #4 No. Men
5/20/63	Yes	No	No	Yes 3	No	No	No	No 3
6/10/63	Yes	Yes	No	No 3	No	No	No	No 3
6/17/63	Yes	Yes	No	No 3	No	No	No	No 3
6/24/63	Yes	No	No	No 3	Yes	No	No	No 3
7/ 1/63	Yes	No	No	No 4	Yes	No	No	No 4
7/ 8/63	Yes	Yes	Yes	Yes 4	No	Yes	Yes	No 4
7/15/63	Yes	Yes	Yes	Yes 4	Yes	No	No	No 4
7/22/63	Yes	Yes	No	Yes 4	No	No	No	No 4
7/29/63	Yes	Yes	Yes	No 4	Yes	No	No	No 4
8/ 5/63	Yes	Yes	No	Yes 4	No	No	No	No 4
8/12/63	No	No	No	No 4	No	No	No	Yes 4
8/19/63	Yes	Yes	Yes	Yes 4	Yes	No	No	No 4
8/26/63	Yes	Yes	No	Yes 4	Yes	No	No	No 4
9/ 2/63	No	Yes	No	Yes 4	No	No	No	No 4
9/ 9/63	No	No	No	Yes 4	No	No	No	Yes 4
9/16/63	No	No	No	Yes 4	No	No	No	Yes 4
9/23/63	No	Yes	No	Yes 4	No	No	No	No 4
9/30/63	No	Yes	No	Yes 4	No	No	No	No 4
10/ 7/63	No	Yes	No	Yes 4	Yes	No	No	Yes 4

Yes=34%

PERIOD PRIOR TO START OF PREMIUM PAY

Week of	Day #1 4 Men	Day #2 4 Men	Day #3 4 Men	Day #4 No. Men	Swg #1 4 Men	Swg #2 4 Men	Swg #3 4 Men	Swg #4 No. Men
4/ 1/63	Yes	No	No	No 3	No	No		No 3
4/ 8/63	No	No	No	No 3	No	No		No 3
4/15/63	Yes	No	No	No 3	No	No		No 3
4/22/63	No	No	No	No 3	No	No		No 3
4/29/63	No	No	No	No 3	No	No		No 3
5/ 6/63	No	No	No	No 3	No	No		No 3
5/13/63	Yes	No	No	No 3	No	No	Yes	No 3
Yes—8%								

[fol. 186]

BEFORE
THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
BRANCH OFFICE
SAN FRANCISCO, CALIFORNIA

C & C PLYWOOD CORPORATION
and
PLYWOOD, LUMBER AND SAWMILL WORKERS
LOCAL UNION NO. 2405, AFL-CIO

Case No. 19-CA-2686

Mr. Robert F. Stange, Seattle, Wash., for the General Counsel.

Mr. George J. Tichy, Spokane, Wash., for Respondent.

Mr. Robert C. Weller, Kalispell, Mont., for the Union.

Before: *Maurice M. Miller*, Trial Examiner.

TRIAL EXAMINER'S DECISION—Jan. 3, 1964

Statement of the Case

Upon a charge duly filed and served July 31, 1963, the General Counsel of the National Labor Relations Board caused a Complaint and Notice of Hearing to be issued and served upon C & C Plywood Corporation, designated as Respondent in this report. The Complaint was issued September 18, 1963; therein Respondent was charged with unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) of the National Labor Relations Act, as amended. 61 Stat. 136, 73 Stat. 519. Thereafter, with an answer duly filed, Respondent conceded certain factual allegations set forth within the Complaint, but denied the commission of any unfair labor practice.

Pursuant to notice, a hearing with respect to the issues was held at Kalispell, Montana, on October 16, 1963, be-

fore me. The General Counsel and Respondent were represented by counsel; the Charging Party was represented by its business representative. Each party was afforded a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence pertinent to the issues. Before any testimony was heard, General Counsel's motion to amend the complaint with respect to certain minor textual matters was granted. When General Counsel's presentation was complete, Respondent moved for dismissal of the complaint, the motion was denied. When the record was complete, Respondent's counsel renewed his motion; disposition of the matter was reserved for this report. Since the hearing's close, briefs have been filed in behalf of the General Counsel, Respondent, and the Charging Party. These have been duly considered.

FINDINGS OF FACT

Upon the entire testimonal record, documentary evidence received, and my observation of the witnesses, I make the following findings of fact:

[fol. 137] I. The Business of Respondent

Respondent, though an Oregon corporation, maintains its principal place of business in Kalispell, Montana, where it is engaged in processing and manufacturing plywood from green veneer. During the twelve-month period preceding the Complaint's issuance, Respondent purchased, from points outside the State of Montana, goods valued in excess of $50,000 and sold plywood valued in excess of $50,000 to purchasers located at various out-of-State points. Upon the Complaint's jurisdictional allegations, which are conceded to be accurate, I find the Respondent is now, and at all times material has been, an employer within the meaning of Section 2(2) of the Act, engaged in commerce and business activities which affect commerce within the meaning of Section 2(6) and (7) of the Act, as amended. With due regard for the jurisdictional standards which the Board presently applies—see *Siemons Mailing Service*, 122 NLRB 81, 43 LRRM

1046, and related cases—I find assertion of the Board's jurisdiction in this case warranted and necessary to effectuate statutory objectives.

II. The Labor Organization Involved

Plywood, Lumber and Sawmill Workers Local Union No. 2405, AFL-CIO, variously designated as the Union or Charging Party herein, is a labor organization within the meaning of Section 2(5) of the Act, as amended, which admits Respondent's employees to membership.

III. The unfair Labor Practices

A. *Issue*

Within their briefs, both counsel suggest that the sole question presented by the present record is whether Respondent violated Section 8(a)(5) of the statute when, during the term of its contract with the Charging Party, it unilaterally inaugurated a system of compensation, for some plywood plant workers covered thereby, designated as a production bonus or premium pay plan. General Counsel argues that the record shows Respondent's resort to unilateral action with respect to such a production bonus or premium pay plan, during the term of a subsisting contract, despite the fact that management's right to promulgate and maintain such a system of compensation had not been fully discussed, consciously explored, conceded or clearly waived by Union negotiators. Respondent's counsel, however, contends, first, that representatives of the firm have bargained "fully and legally" with respect to all matters about which Respondent may legally be required to bargain, under the circumstances. Secondly, Respondent argues that its course of conduct derived from management's good faith belief that promulgation of the production bonus or premium pay plan, during their contract's term, was permissible under certain relevant contract language. Thirdly, Respondent contends that the Charging Party "effectively and clearly" waived its right to bargain regarding the challenged compensation plan. Lastly, Respondent's counsel suggests that the present dispute with respect to the propriety of Respond-

ent's decision derives from differences between the firm's management and Union representatives with respect to the proper interpretation of certain contract language; counsel contends that this agency has not previously assumed, and should not now assume, the role of a contract policeman, by attempting to decide whether disputes regarding the meaning and administration of contract terms constitute an unfair labor practice.

B. *Facts*

1. Preliminary matters

General Counsel alleges, and Respondent concedes, that the Charging Party herein—since on or about August 28, 1962, and at all times material thereafter—has been [fol. 138] the certified representative for collective bargaining purposes of Respondent's workers within a group defined as follows:

> All production and maintenance employees of the Employer at its veneer and plywood plants near Kalispell, Montana, excluding office clerical employees, guards, professional employees and supervisors as defined in the Act.

Through its answer, Respondent has conceded the appropriateness of the workers' group thus defined, for the purposes of collective bargaining, within the meaning of Section 9(b) of the statute. Further, Respondent has conceded that, by virtue of Section 9(a) of the Act, the Union has been, and now is, entitled to function as the exclusive representative of all the firm's employees within the unit described, for the purposes of collective bargaining in regard to rates of pay, wages, hours of employment, and other conditions of work.

2. Contract negotiations

From October 1962, until May 1, 1963, representatives of Respondent and the Charging Party negotiated with respect to a contract. Their negotiations required eleven bargaining sessions, the last two of which were held on

March 12th and April 19th; thereafter, the negotiators signed their "Working Agreement" with a May 1st effective date.

The contract provided that it would remain in full force and effect through October 31, 1963, and from year to year thereafter, absent some appropriately timed written notice proffered by either party of a desire to change, modify, or terminate it. Further, the contract contained, among others, the following provisions:

Article XVII

WAGES

A. A classified wage scale has been agreed upon by the Employer and Union, and has been signed by the parties and thereby made a part of the written agreement. *The Employer reserves the right to pay a premium rate over and above the contractual classified wage rate to regard any particular employee for some special fitness, skill, aptitude or the like.* The payment of such a premium rate shall not be considered a permanent increase in the rate of that position and may, at sole option of the Employer, be reduced to the contractual rate at such time as the Employer feels that the employee no longer merits the premium, except that no present employee of the date of signing of this original Working Agreement shall suffer a wage reduction as a result of this Agreement. (Emphasis supplied).

* * * *

Article XIX

WAIVER OF DUTY TO BARGAIN

The parties acknowledge that during negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter of collective bargaining, and that the understanding and [fol. 139] agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the Employer and Union,

for the life of this Agreement, each voluntarily and unqualifiedly waives the right and each agree that the other shall not be obligated to bargain collectively with respect to any subject matter not specifically referred to or covered in this Agreement, even though such subjects or matters may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement.

The contract likewise included a classified wage scale, with hourly rates specified for twenty-seven job classifications. Wages were declared "closed" for the duration of the contract's term, subject to "opening" in the same manner as provided in the contractual termination provision.

During a negotiating session "quite some time prior" to the contract's execution, Respondent's principal negotiator, General Manager Thomason, mentioned that some other lumber products company had proposed an "incentive bonus system" within its plywood department. Robert Weller, executive secretary of the Montana District Council, Lumber and Sawmill Workers, and the Charging Party's principal negotiator, declared, however, that the Union would not agree to such a plan. None of the parties, then, pursued the matter.

Later—but some time before their March 12, 1963 session—the negotiators reached tentative agreement with respect to the general "wage" clause of their projected contract. The clause—so far as the record shows—was reduced to written form, ready for subsequent incorporation within the contract when the parties reached complete agreement with respect to that document's terms.

During their March 12th session, negotiators for Respondent and the Charging Party reached a temporary impasse regarding hourly wage rates for workers within the three job classifications which made up the firm's glue spreader crews.

(These job classifications included core feeders, core layers and sheet turners. Throughout the period which this case is concerned there were 118-201

workers employed within the unit previously found appropriate by the Board for the purposes of collective bargaining; approximately some 26-32 men staffed Respondent's glue spreader crews.)

Following separate caucus sessions—conducted with a Federal Concilator's participation—company and Union negotiators met jointly to conclude the session. Within a context which the record—taken as a whole—leaves somewhat vague, General Manager Thomason of Respondent informed the Union negotiators that the firm was considering a premium pay or incentive pay program for workers on glue spreader crews. So far as the record shows, Thomason's comment elicited no reply.

Within his brief, the Charging Party's business representative professes no recollection with respect to such a statement purportedly made by Respondent's general manager; the Union contends that such a statement, if made, must rave been made to the Federal Concilator during Respondent's separate caucus. During cross-examination, however, Business Representative Weller substantially conceded knowledge with respect to Thomason's comment. With respect to this aspect of the case, his testimony reads as follows:

[fol. 140] Q. Now, wasn't it true that these so-called premium incentive plans were discussed at some length in the meeting, particularly, that occurred on March 12, 1963?

A. I don't think so, in fact, the company didn't actually propose any incentive rates.

* * * *

Q. Didn't the company advise you and your associates representing the union that they were studying an incentive or premium program?

A. That they had and probably were studying it or considering it or something.

Q. And that they were anticipating putting one into effect?

A. They may have said they would like to or had in mind something like that but they didn't anticipate they were going to put anything into effect.

With matters in this posture, I find that Thomason did mention that Respondent was "giving thought" to the possibility of promulgating a premium pay or incentive pay program for glue spreader crews. While a witness, Respondent's general manager testified that the firm's consideration of some possible premium or incentive pay for these crews derived from management's behalf that such a plan would be permissible under Respondent's contractually-reserved right to pay "premium rate(s) over and above the contractual classified wage rate(s)" which had been set forth within their projected contract's tentative "wage" provision; Thomason, however, could not recall any specific reference to Respondent's presumption regarding the relationship between premium pay plans which the firm's management was then considering and the projected contract's general "wage" provision.

(Summoned as Respondent's witness, Dexter Bright, Montana representative for Timber Products Manufacturers Association—who had been present throughout the negotiations—testified that his notes regarding the March 12th session show, "Company is working on an incentive plan for spreader crews *under premium clause.*" [Emphasis supplied]. Such a notation, however, cannot be considered reliable, probative, or substantial evidence that Respondent's negotiators *mentioned* their reliance upon the projected contract's "premium clause," to justify the firm's consideration of some incentive pay plan for glue spreader crews. Since Bright had previously participated in discussions with management representatives, regarding the propriety of some incentive pay plan consistent with the projected contractual provision, his notation could be construed merely as a reflection of his personal conception regarding Respondent's presumptive justification.)

Final agreements were reached April 19th with respect to remaining differences between the negotiators; on May 1, 1963, the negotiated "Working Agreement" between Respondent and the Charging Party was signed.

Thereafter, on May 20th, Respondent posted a plant notice regarding a premium pay schedule for glue spread-

er crews which management proposed to try for a few months "to determine how it [would] work" for those concerned. The plan provided that core feeders, core layers, and sheet turners would receive pay at the rate of $2.50 per hour, contingent upon their particular crew's [fol. 141] achievement of certain stated production standards within the firm's regular two-week pay period; later, these standards were modified to reflect the norms which crews would have to meet within a weekly period.

(With respect to each of the three job classifications noted, the posted premium rate represented an hourly pay rate substantially higher than the classified hourly rate called for by the Working Agreement between Respondent and the Charging Party, previously negotiated. While the classified contractual wage rates for each of the three job classifications varied, the achievement of Respondent's stated production standard by a given glue spreader crew would entitle every member of the crew in question, regardless of job classifications, to receive the same $2.50 hourly premium rate.)

According to the posted plan, once Respondent's production standard was met—regardless of the degree by which production might exceed such a standard—the premium rate payable would remain the same. The plan made no provision for further premium rate increases commensurate with increased production under the plan. Respondent's proposal to pay $2.50 per hour, thus, represented a set premium rate declared payable to each glue spreader crew member whenever his particular crew, within a given pay period, reached or exceeded the previously set production goal.

The record shows that Respondent's premium pay plan was formulated, and management's bulletin with respect thereto posted, without prior notice to the Charging Party, and without affording Union representatives any opportunity to consult or bargain with company spokesmen regarding its propriety. The plan came to the charging Party's attention, however, when one of Respondent's workers brought copy of the firm's bulletin to the Union office.

By letter dated May 27th, Business Representative Weller of the Charging Party requested a conference with Company representatives to discuss the firm's premium pay notice. Respondent was advised that:

> We do not consider this to be premium pat within the meaning of Article XVII, but rather a change in wages made dependent upon a production basis rather than hourly rates agreed upon with the Union.

Weller professed the Union's willingness to discuss hourly rate increases or premium hourly rates, generally but declared that his organization did not consider the subject of production bonuses, or wage rates based upon production standards, properly open for negotiations.

Respondent replied promptly, suggesting a conference date. Thereafter, two meetings were held, the first on June 7th and the second on July 15th. During both sessions, Union representatives, though given a chance to seek a clarification or to negotiate regarding the terms of the firm's incentive bonus or premium pay plan, refused raise questions or to discuss them. They simply requested the plan's recission. Shortly after the first meeting noted, Respondent was notified, by letter, that:

> . . . we do not consider the unliateral changing of agreed upon hourly wage rates to a method of computing wages by a different method to be proper either under the contract or under statutes regulating collective bargaining relationships . . . .

Respondent's representatives, however, maintained their previously-declared position with respect to the propriety of the posted premium compenations plan under the contract's general "wage" provision. They refused to rescind the plan. With matters in this posture, the charge, herein, was filed.

[fol. 142] C. *Conclusions*

General Counsel contends that Respondent's May 20th bulletin promulgated a new compensation plan for glue spreader crew personnel, which the firm's newly negotiated contract did not sanction. The posted notice, so the

argument runs, reflected Respondent's promulgation of a *group* incentive or production bonus plan, which did not provide for the compensation of "particular" workers at some premium hourly rate calculated to reward such workers, particularly, for their special fitness, skill, aptitude, or the like—this, because Respondent's plan merely provided that each member of a deserving glue spreader crew would receive a uniform premium rate, regardless of job classification, whenever the given crew's production reached or exceeded stated production norms. Respondent, however, argues that Article XVII within its current contract permitted management's promulgation of the "premium pay" program now in question—this, because the uniform hourly rate which might be payable under the plan represented a premium rate payable whenever the firm's stated production norm would be reached or exceeded, and because the capacity of glue spreader crews to satisfy such a production standard would necessarily derive from their possession of "some special fitness, skill, aptitude" or the like.

Substantially, therefore, this case reflects a dispute with respect to the scope of Respondent's contractually-reserved right to pay a premium rate conditioned upon the firm's desire to reward particular workers possessed of certain qualifications. General Counsel's complaint charges no statutory violation severable from this dispute between Respondent and the Charging Party, derived entirely from their conflicting contract interpretations.

> (Respondent is charged, merely, with unilaterally promulgating a group wage incentive plan, without prior consultation and despite Union objections. Respondent contends, precisely, that management was free to take such concededly unilateral action without prior consultation, pursuant to its contractually-reserved right to pay premium rates for specifically designated purposes.)

Certainly, these disparate contentions—with respect to the type of wage rate revision which the contract permitted—reveal that the general "wage" provision in question cannot, really, be considered sufficiently clear, in this particu-

lar regard, to forestall disputes regarding its scope. Despite a contrary contention by General Counsel and the Charging Party's representative, no persuasive demonstration has been proffered that Respondent's management—when it promulgated the disputed premium pay plan for glue spreader crew members—was acting in bad faith.

(Considerable testimony was received relative to various functions performed by core feeders, core layers and sheet turners working as members of glue spreader crews; Respondent has suggested that workers within these job classifications must possess certain designated skills, aptitudes, and the like, together with the ability effectively to mesh such "skills, aptitudes and fitnesses" with those of other crew members. Upon the entire record, however, no conclusion need be reached with respect to the substantive merits of Respondent's view. The belief of the firm's management that each crew member's "skill, aptitude and fitness" could properly be compensated through payment at some uniform premium rate, pursuant to the contract's general "wage" provision certainly cannot be dismissed as lacking rational justification.)

[fol. 143] General Manager Thomason's decision—so far as the record shows—was consciously reached within the framework of his firm's contract, as he construed it, and did not reflect a deliberate attempt to modify or terminate it. See *United Telephone Company of the West*, 112 NLRB 779. The Board's decision in the cited case—with respect to circumstances substantially comparable—declared that:

Regarding the question of which party correctly interpreted the contract, the Board does not ordinarily exercise its jurisdiction to settle such conflicts. As the Board has held for many years, with the approval of the courts; '. . . it will not effectuate the statutory policy . . . for the Board to assume the role of policing collective contracts between employers and labor organizations by attempting to decide whether

disputes as to the meaning and administration of such contracts constitute unfair labor practices under the Act." (Citing cases).

In this connection, further, see *Morton Salt Company*, 119 NLRB 1402, wherein the Board—albeit in a case which did not involve a refusal to bargain—reached a comparable conclusion. Without passing upon Respondent's other contentions, I find these considerations dispositive of this case.

Within his complaint, General Counsel has charged Respondent with a further refusal, upon Union demand, to bargain collectively regarding the newly promulgated group wage incentive plan. With matters in their present posture, however, this contention cannot be sustained. Though Respondent's management, clearly, refused to concede any lack of propriety or justification with respect to the firm's promulgation of the disputed premium pay plan, spokesmen for the Company made manifest, throughout, their readiness to negotiate regarding the specific terms and conditions under which premium pay would be awarded workers on glue spreader crews. Representatives of the Charging Party, however, made no effort to bargain regarding the plan's content. With matters in their present posture, therefore, Respondent cannot be found in default—upon this ground either—with respect to its statutory obligation to bargain.[1]

CONCLUSIONS OF LAW

In the light of the foregoing findings of fact, and upon the entire record in this case, I make the following conclusions of law:

1. C & C Plywood Corporation is an employer within the meaning of Section 2(2) of the Act, engaged in com-

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[1] On November 18, 1963, counsel for Respondent filed a Motion to Correct Transcript herein. The motion listed 138 corrections for the 112 page record. While most of the transcript errors cited seem to be without real significance, no protests with respect to the motion have been filed. The motion is herewith made part of the record; correction of the transcript with respect to each of the matters set forth within the motion is hereby ordered.

merce and business activities which affect commerce within the meaning of Section 2(6) and (7) of the Act, as amended.

2. Plywood, Lumber and Sawmill Workers Local Union No. 2405, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act, as amended, which admits employees of C & C Plwood Corporation to membership.

[fol. 144] 3. Respondent did not, through management's promulgation of a premium pay plan for glue spreader crew workers prior to consultation with Union representatives, or through its refusal to rescind the plan upon Union demand, refuse to bargain with the Charging Party, within the meaning of Section 8(a)(5) of the Act, as amended; nor has Respondent, thereby, interfered with, restrained or coerced employees in their exercise of rights statutorily guaranted, within the meaning of Section 8 (a)(1) of the Act, as amended.

RECOMMENDATION

Upon these finding of fact and conclusions of law, and upon the entire record in the case, my recommendation is that the Board, pursuant to Section 10(c) of the National Labor Relations Act, as amended, dismiss the present complaint in its entirety.

Dated: January 3, 1964

/s/ Maurice M. Miller
Trial Examiner

[fol. 145] BEFORE
THE NATIONAL LABOR RELATIONS BOARD

Case No. 19-CA-2686

C & C PLYWOOD CORPORATION

and

PLYWOOD, LUMBER AND SAWMILL WORKERS LOCAL UNION No. 2405, AFL-CIO

DECISION AND ORDER—Aug. 24, 1964

On January 3, 1964, Trial Examiner Maurice M. Miller issued his Decision in the above-entitled proceeding, finding that Respondent had not engaged in unfair labor practices and recommending that the complaint be dismissed in its entirety, as set forth in the Trial Examiner's Decision attached hereto. Thereafter, the General Counsel and the Charging Party each filed exceptions to the Decision and a supporting brief. Respondent filed a brief in support of the Decision.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions, the briefs, and the entire record in the case, and finds merit in the exceptions. Accordingly, the Board adopts only so much of the findings, conclusions, and recommendations of the Trial Examiner as are consistent with this Decision.

On May 1, 1963, Respondent and the Union entered into a collective-bargaining agreement effective to October 31, 1963. The agreement contained a wage clause in Article XVII which stated in part:

> The Employer reserves the right to pay a premium rate over and above the contractual classified wage rate to reward any particular employee for some special fitness, skill, aptitude, or the like.

On May 20, 1963, Respondent posted a notice announcing that effective immediately and "for the next couple of

[fol. 146] months," members of the glue spreader crews would receive premium pay provided that they met certain production standards.[1]

Respondent formulated and placed in effect the premium pay schedule without prior notice to, or bargaining with, the Union. About a week later the Union learned of the plan from one of its members. By letter dated May 27, the Union asked Respondent for a conference to discuss the premium pay notice. In the letter, the Union said:

> We do not consider this to be premium pay within the meaning of Article XVII, but rather a change in wages made dependent upon a production basis rather than hourly rates agreed upon with the Union.

The parties met on June 7 and 15, 1963. The Union requested rescission of the plan. Respondent refused although it offered to discuss terms of the plan. The Union then filed the present unfair labor practice charges alleging that Respondent had unlawfully refused to bargain by unilaterally establishing the premium pay plan.

The Trial Examiner found that the dispute between the Union and Respondent involved only a disagreement as to the meaning of terms of a collective-bargaining contract and that the promulgation of the premium pay plan according to Respondent's understanding of those terms was not a violation of Section 8(a)(5). We disagree.

In filing its unfair labor practice charge, the Union was complaining not of a violation of its contract with Respondent, but of the invasion of its statutory right as collective-bargaining representative of employees in the unit to bargain about any change in the terms and conditions of employment for such employees.[2] *Prima facie*,

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[1] The contract rates of pay for members of the glue spreader crew were: core feeder $2.24; core layer, $2.29; sheet turner, $2.15. The premium pay schedule provided for an hourly rate of $2.50 to each member of the crew.

[2] *Timken Roller Bearing Co.* v. *N.L.R.B.*, 325 F. 2d 746 (C.A. 6); *Smith Cabinet Mfg. Co., Inc.*, 147 NLRB No. 168. This is not a case like *United Telephone Company of the West*, 112 NLRB 779, or *Morton Salt Company*, 119 NLRB 1402, relied upon by the Trial

Respondent's change in the terms for compensating glue spreader crews without notification to, or bargaining with, [fol. 147] the Union violated Section 8(a)(5).[3] The Board has recognized, that the statutory right of a union to bargain about changes in terms and conditions of employment may be waived by the union. Respondent's affirmative defense to the *prima facie* case is that there was such a waiver in this case. It contends: (a) during the contract negotiations, the Union waived its right to be consulted about group incentive pay; and (b) the wage clause in the contract gave the Respondent the right unilateraly to put into effect a wage incentive plan.

In order to determine the validity of this waiver defense, the Board must necessarily evaluate the testimony as to what occurred during contract negotiations, and must interpret the wage clause of the contract. We find no obstacle to either course. The Board is not unfamiliar with the problems of contract construction. For example, it is frequently required to construe contracts in representation cases when a contract is claimed to be a bar to a representation petition, and in unfair labor practice proceedings involving the meaning and validity of union-security clauses, or clauses alleged to be violative of Section 8(e). Moreover, this is not a case where the identical question of contract construction is pending before a civil court or an arbitrator and in the interests of comity, the Board defers to the other tribunal.[4] Accordingly, we reject the argument that, because determination of the validity of the defense involves construction of the collective-bargaining contract, the complaint alleging an 8(a)(5) violation should be dismissed.[5]

Examiner, where an alleged breach of contract was the very basis for the 8(a)(5) allegation in the first case, and for the 8(a)(1) and (2) allegations in the second.

[3] *N.L.R.B.* v. *Katz*, 369 U.S. 736.

[4] See *National Dairy Products Co.*, 126 NLRB 434; *United Telephone Company of the West*, *supra*. The contract between the Union and Respondent contains no provision for arbitration.

[5] *Smith Cabinet Manufacturing Company, Inc.*, *supra*.

(a) Waiver of a statutory right will not lightly be inferred. The relinquishment to be effective must be "clear and unmistakeable." [6] Or as the Board said in the *Proctor Manufacturing* case: [7]

> The Board's rule, applicable to negotiations during the contract term with respect to the subject which has been discussed in precontract negotiations but [fol. 148] which has not been specifically covered in the resulting contract, is that the employer violates Section 8(a)(5) if, during the contract term, he refuses to bargain or takes unilateral action with respect to the particular subject, unless it can be said from an evaluation of the prior negotiations that the matter was "fully discussed" or "consciously explored" and that the Union "consciously yielded" or clearly and unmistakably waived its interest in the matter.

In the present case, the Trial Examiner found that during contract negotiations, Respondent's negotiator mentioned that Respondent was "giving thought" to the possibility of promulgating a premium pay or incentive wage program for glue spreader crews. This alone, although in the context of a resulting contract which does not "specifically cover" a group incentive pay plan, is not a waiver by the Union under the above standard. In addition, we believe that any conclusion that the Union "consciously yielded" on the *group* suggestion made by the Respondent is negated by the inclusion in the contract of a specific provision for *individual* premium pay. Moreover, the Trial Examiner found that this comment was made at a bargaining session when the parties had reached an impasse over the hourly rates for the three job classifications which constituted the glue spreader crews.

Accordingly, we find that there is not sufficient evidence under the above standard to establish that the Union waived its right to bargain about a wage incentive system.

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[6] *Timken Roller Bearing Co.* v. *N.L.R.B.*, *supra*.

[7] *Proctor Manufacturing Co.*, 131 NLRB 1166, 1169.

(b) The wage clause gives Respondent the right to pay a premium rate to "reward any particular employee for some special fitness, skill, aptitude, or the like." It seems to us that this clause grants the Employer the right to make individual merit increases for special competence or skill. We do not construe it, as Respondent apparently does, to authorize Respondent to select a group of employees and unilaterally change the method of compensating them from a straight hourly basis, with a fixed rate for each job category, to what is in effect a production basis, by raising the hourly contract wage rate contingent upon increased productivity. To accept Respondent's construction is tantamount to saying that the Union inferentially surrendered to Respondent the right unilaterally to establish production standards and wage rates based thereon as a method for compensating employees. Such an intent is so contrary to labor relations experience that it should not be inferred unless the language of the contract or the history of negotiations clearly demonstrates this to be a fact. We see nothing in these negotiations or this contract to establish that the Union intended [fol. 149] to waive its statutory right to bargain over the matter in dispute. The Union's prompt protest against Respondent's posting of the new wage schedule also belies any such intent.

Accordingly, we find that by unilaterally changing the wage rates for members of the glue spreader crews Respondent violated Section 8(a)(5) and (1) of the Act.

The effect of the unfair labor practice upon commerce

The conduct of the Respondent set forth above, occurring in connection with the operations of Respondent as set forth in Section I of the Trial Examiner's Decision, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

The Remedy

Having found that Respondent has engaged in certain unfair labor practices, we shall order that it cease and

desist therefrom, and from like or related conduct, and that it take certain affirmative action to effectuate the policies of the Act.

Conclusions of Law

1. C & C Plywood Corporation is an employer within the meaning of Section 2(2) of the Act, engaged in commerce and business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. Plywood Lumber and Sawmill Workers Local Union No. 2405, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By instituting a premium pay plan for glue spreader crew workers without notice to, or bargaining with, the Union, Respondent violated Section 8(a)(5) and (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

[fol. 150] (a) Failing or refusing to bargain collectively with Plywood, Lumber and Sawmill Workers Local Union No. 2405, AFL-CIO, as the exclusive representative of its employees in the appropriate bargaining unit,[8] by unilaterally instituting a premium pay plan for glue spreader crews or otherwise changing any term or condition of employment of employees within the aforesaid unit without prior notice to, and bargaining with, the Union.

[8] The appropriate unit is composed of all production and maintenance employees of the Respondent at its veneer and plywood plants near Kalispell, Montana, excluding office clerical employees, guards, professional employees, and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action which it is found will effectuate the policies of the Act.

(a) Upon request, bargain with Plywood, Lumber, and Sawmill Workers Local Union No. 2405, AFL-CIO, with respect to the institution of a premium pay plan for glue spreader crews and, if requested by said Union, rescind any plan which Respondent may have unilaterally instituted.

(b) Post in its plant in Kalispell, Montana, copies of the notice attached hereto marked "Appendix."* Copies of such notice, to be furnished by the Regional Director for the Nineteenth Region, shall, after being duly signed by an authorized representative of Respondent, be posted immediately upon receipt thereof, and be maintained by it for a priod of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

[fol. 151] (c) Notify the Regional Director for the Nineteenth Region, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith.

Dated, Washington, D. C. Aug 24 1964

FRANK W. McCULLOCH, Chairman

JOHN H. FANNING, Member

HOWARD JENKINS, JR., Member

NATIONAL LABOR RELATIONS BOARD

* In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

MEMBER LEEDOM, DISSENTING:

Unlike my colleagues, I would affirm the Trial Examiner for the reasons indicated in his Decision. As the Trial Examiner there points out, the Board has long held that it will not effectuate the policies of the Act for it to police collective-bargaining agreements by attempting to resolve disputes over their meaning, whatever a proper construction of the disputed language in the contract may be, where it is evident that the Respondent acted reasonably and in good faith. In such cases, the aggrieved party's remedy is to seek judicial or other enforcement of the contract.

As the Trial Examiner found, this is precisely such a case. My colleagues do not purport to depart from the *United Telephone* case, 112 NLRB 779, relied on by the Trial Examiner here, where the Board applied this salutary rule. Contrary to my colleagues, the case at bar differs in no significant respect from *United Telephone*.[10] [fol. 152] There, as well as here, the employer, *prima facie*, violated the Act by unilaterally changing terms or conditions of employment; in both cases, the terms of the contract at least colorably justified the employer's good-faith making of the the change; and here, as well as there, the parties disagreed with respect to the meaning of the contract, and a determination as to whether the employer violated the Act turns upon a proper construction of the contract. In these circumstances, the Union's remedy is before another forum.

Accordingly, like the Trial Examiner, I would dismiss the complaint.

Dated, Washington, D. C.
Aug 24 1964

BOYD LEEDOM, Member
NATIONAL LABOR RELATIONS BOARD

[10] While it is true that the pendency of a civil suit calling for interpretation of the contract was an additional reason for dismissal of the complaint in *United Telephone*, the fact that, here, no such suit is pending and there is no provision in the contract for arbitration, does not alter the established rule that the Board is not the proper forum to remedy a breach of contract or to obtain specific performance of its terms.

[fol. 153]

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT fail to refuse to bargain collectively with PLYWOOD, LUMBER AND SAWMILL WORKERS LOCAL UNION NO. 2405, AFL-CIO, by unilaterally instituting a premium pay plan for glue spreader crews or otherwise changing any term or condition of employment in the unit composed of:

> All production and maintenance employees at our veneer and plywood plants near Kalispell, Montana, excluding office clerical employees, guards, professional employees, and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Act.

C & C PLYWOOD CORPORATION
(Employer)

Dated ..... By .....
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 327 Logan Building, 500 Union Street, Seattle Washington, 98101 (Tel. No. MUtual 2-3300), if they have any question concerning this notice or compliance with its provisions.

[fol. 154]

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Before: BARNES and KOELSCH, Circuit Judges, and MATHES, Senior District Judge

ORDER OF SUBMISSION—July 9, 1965

This cause coming on for hearing, Melvin Pollack, Attorney, N.L.R.B., argued for the appellant, and George J. Tichy, argued for the appellee, thereupon the Court ordered the cause submitted for consideration and decision.

[fol. 155]

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Before: BARNES and KOELSCH, Circuit Judges, and MATHES, Senior District Judge

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF DECREE—Sept. 10, 1965

ORDERED that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the Clerk and that the decree be filed and recorded in the minutes of this Court in accordance with the opinion rendered.

[fol. 156]

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 19,769

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

C & C PLYWOOD CORPORATION, RESPONDENT

OPINION—September 10, 1965

On Petition to Enforce an Order of the National Labor Relations Board

Before: BARNES and KOELSCH, Circuit Judges, and MATHES, Senior District Judge

MATHES, Senior District Judge:

The National Labor Relations Board petitions to enforce its order of August 24, 1964, which directs among other things that respondent: "Upon request, bargain with Plywood, Lumber, and Sawmill Workers Union No. 2405, AFL-CIO, with respect to the institution of a premium pay plan for glue spreader crews and, if requested by said Union, rescind any plan which Respondent may have unilaterally instituted."

The order sought to be enforced is the culmination of Administrative proceedings which followed filing by the union of a complaint before the Board on July 31, 1963, charging that respondent, as employer, "has engaged in and is engaging in unfair labor practices" within the meaning of section 8(a), subsections (1) and (5) of the National Labor Relations Act [29 U.S.C. § 158 (a) (1) and (5)], in that: "On or about May 20, 1963, the Employer unilaterally, and without agreement with representatives of its employees, changed the wages, rates of [fol. 157] pay and conditions of certain of its employees at a time when such rates of pay, wages and conditions had just been incorporated in a signed contract with the

Union and were not subject to renegotiation or change by either party."

Respondent conceded that at all times material to the proceeding, it was engaged in the business of processing and manufacturing plywood from green veneer at Kalispell, Montana; that since on or about August 28, 1962, the union had been the certified representative for purposes of collective bargaining of the employees involved and, as such, by virtue of § 9(a) of the Act [29 U.S.C. § 159(a)], had been and is now the exclusive bargaining representative of all employees in that unit; that from September, 1962, until May 1, 1963, the union and respondent engaged in a number of bargaining sessions culminating in a signed collective-bargaining agreement, effective from May 1, 1963, until October 31, 1963, but remaining in full force and effect from year to year thereafter absent notice of a desire to change; that since on or about May 20, 1963, without consulting the union, the respondent unilaterally, and over the objection of the union, instituted a group wage incentive plan affecting approximately one-fourth of the employees in the appropriate bargaining unit.

Respondent denied the unfair-labor-practice charge, and asked the Board to dismiss the complaint. Respondent's consistent position has been that the group wage incentive plan was instituted in the good-faith belief that the plan was permissible under the provisions of the collective-bargaining agreement and that, even if not expressly permitted, the only issue presented to the Board was a disagreement as to the proper interpretation of the contract. Thus respondent has contended throughout that the matter was not properly before the Board on an unfair-labor-practice charge.

The two articles of the collective-bargaining agreement relied upon by respondent are the following:

"Article XVII

"WAGES

"A. A classified wage scale has been agreed upon by the Employer and Union, and has been signed by the

[fol. 158] parties and thereby made a part of the written agreement. The Employer reserves the right to pay a premium rate over and above the contractual classified wage rate to reward any particular employee for some special fitness, skill, aptitude or the like. The payment of such a premium rate shall not be considered a permanent increase in the rate of that position and may, at sole option of the Employer, be reduced to the contractual rate at such time as the Employer feels that the employee no longer merits the premium, except that no present employee of the date of signing of this original Working Agreement shall suffer a wage reduction as a result of this Agreement.

* * * *

"Article XIX

"WAIVER OF DUTY TO BARGAIN

"The parties acknowledge that during negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter of collective bargaining, and that the understanding and agreement arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the Employer and the Union, for the life of this Agrement, each voluntarily and unqualifiedly waives the right and each agrees that the other shall not be obligated to bargain collectively with respect to any subject matter not specifically referred to or covered in this Agreement, even though such subjects or matters may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement."

The Trial Examiner found that respondent acted in the good-faith belief that it was authorized by the above-quoted provisions of the collective-bargining agreement to take the unilateral action it did with respect to the premium pay in question. The Examiner then concluded:

"General Manager Thomason's decision—so far as the record shows—was consciously reached within the [fol. 159] framework of his firm's contract, as he construed it, and did not reflect a deliberate attempt to modify or terminate it. See *United Telephone Company of the West*, 111 NLRB 779. The Board's decision in the cited case—with respect to circumstances substantially comparable—declared that:

> "Regarding the question of which party correctly interpreted the contract, the Board does not ordinarily exercise its jurisdiction to settle such conflicts. As the Board has held for many years, with the approval of the courts; '. . . it will not effectuate the statutory policy . . . for the Board to assume the role of policing collective contracts between employers and labor organizations by attempting to decide whether disputes as to the meaning and administration of such contracts constitute unfair labor practices under the Act.'"

The Trial Examiner thereupon recommended to the Board:

> "Upon these findings of fact and conclusions of law, and upon the entire record in the case, my recommendation is that the Board, pursuant to Section 10(c) of the National Labor Relations Act, as amended, dismiss the present complaint in its entirety."

The Board, with one member dissenting, reversed the Trial Examiner, observing in part:

> "The Trial Examiner found that the dispute between the Union and Respondent involved only a disagreement as to the meaning of terms of a collective-bargaining contract and that the promulgation of the premium pay plan according to Respondent's understanding of those terms was not a violation of Section 8(a)(5). We disagree.
>
> "In filing its unfair labor practice charge, the Union was complaining not of a violation of its contract with Respondent, but of the invasion of its

statutory right as collective-bargaining representative of employees in the unit to bargain about any change in the terms and conditions of employment for such employees."

[fol. 160] Because the union elected to file an unfair labor practice complaint with the Board, rather than to proceed in the courts, the question presented involves the power of the Board under § 10(a):

> "The Board is empowered . . . to prevent any person from engaging in any unfair labor practice . . . affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise . . . ." [29 U.S.C. § 160(a).]

The proceeding before us is, therefore, to be distinguished from cases involving suits originally instituted in the courts under § 301(a) of the National Labor Relations Act. [29 U.S.C. § 185(a); *cf.*: *Humphrey* v. *Moore*, 375 U. S. 335 (1964); *Smith* v. *Evening News Assn.*, 371 U. S. 195 (1962); *Atkinson* v. *Sinclair Refining Co.*, 370 U. S. 238 (1962); *Retail Clerks Int. Assoc.* v. *Lion Dry Goods, Inc.*, 369 U. S. 17 (1962); *Local 174, Teamsters* v. *Lucas Flour Co.*, 369 U. S. 95 (1962); *Dowd Box Co., Inc.* v. *Courtney*, 368 U. S. 502 (1962); *San Diego Bldg. Trades Council* v. *Garmon*, 359 U. S. 236 (1959).]

We recently held in *Square D Company* v. *N.L.R.B.*, 332 F. 2d 360 (9th Cir. 1964), that the Board has no jurisdiction to adjudge an unfair labor practice where "the existence of an unfair labor practice . . . is *dependent* upon the resolution of a preliminary dispute involving *only* the interpretation of the contract". [Emphasis in the original, 332 F. 2d at 365-366.]

Although the Board contends that *Square D.* does not control our decision here, admittedly the majority of the Board found it necessary to "construe" the collective-bargaining agreement in order to find an unfair labor practice. Indeed, the Board majority "construed" the contract by looking back to negotiations presumably merged in the agreement, as well as to the provisions of the agreement itself, and by considering also the fact that the union

made "prompt protest" against respondent's action, admittedly taken under what respondent conceived to be a proper interpretation of the agreement.

We note, moreover, that the rationale of the Board majority, in construing the contract as it did, was as unique [fol. 161] as it was circuitous. The course of reasoning was that the provisions of the collective-bargaining agreement are "so contrary to labor relations experience" that the union should never have executed such a contract; and since the provisions in question should never have been agreed to by the union, it must be presumed that the union did not intend them, since the union's "prompt protest against Respondent's posting of the new wage schedule . . . belies any such intent".

The Board would distinguish the controversy here from that in *Square D.*, by quoting the language of our opinion recognizing the jurisdiction of the Board in instances of "a controversy over the applicability or violation of a duty not only prescribed by the contract but also imposed directly by the Act, disregard of which would constitute an unfair labor practice". [*Square D. Company* v. *N.L.R.B.*, *supra*, 332 F. 2d at 364.] But we find no support for the Board's position in that language.

Where the disputed provisions of a collective-bargaining agreement do no more than affirmatively prohibit conduct already defined and forbidden by the Act as an unfair labor practice, the Board can never be ousted of jurisdiction, for the reason that the controversy would involve no more than a breach of these negative contract provisions—a violation of duty already "imposed directly by the Act", irrespective of the contract itself. Were it otherwise, it would be a simple matter to remove from the jurisdiction of the Board all unfair labor practice disputes, by the facile device of prohibiting in the collective-bargaining contract all unfair labor practices defined in the Act.

The disputed provisions of the collective-bargaining agreement at bar clearly present quite a different situation from that just discussed. Here, the parties have arguably agreed affirmatively to permit conduct which, sans contract, the Act would admittedly condemn as an unfair labor practice. The resulting controversy then, as to wheth-

er the provisions of the contract positively sanction the action complained of, is a matter for arbitration where, as in *Square D.*, the collective-bargaining agreement so provides, or for adjudication by the Courts; and hence is beyond the subject-matter jurisdiction of the Board. This is necessarily so because, under the circumstances at [fol. 162] bar, the very existence of the alleged unfair labor practice is "*dependent* upon the resolution of a preliminary dispute involving *only* the interpretation of the contract". [*Square D. Company* v. *N.L.R.B.*, *supra*, 332 F. 2d at 365-366.]

Since the Board has no jurisdiction to enforce collective bargaining agreements as such, both reason and policy dictate that adjudication of disputes, as to the scope of contractual rights and obligations, be by tribunals empowered to compel compliance with them. As declared in *N.L.R.B.* v. *American National Ins. Co.*, 343 U. S. 395 (1952), "the Board may not, either directly or indirectly, . . . sit in judgment upon the substantive terms of collective bargaining agreements". [343 U. S. at 404; see also: *Dowd Box Co., Inc.* v. *Courtney*, *supra*, 368 U. S. at 510-513; *Square D. Company* v. *N.L.R.B.*, *supra*, 332 F. 2d at 366; *In Re Morton Salt Co.*, 119 N.L.R.B. 1402, 1403 (1958); *In Re United Tel. Co. of the West*, 112 N.L.R.B. 779, 781-782 (1955).]

Here, as in *N.L.R.B.* v. *Nash-Finch Co.*, 211 F. 2d 622 (8th Cir. 1954):

> "It seems to us that what the Board has done, under the guise of remedying unfair labor practices, is to attempt to bestow . . . benefits which it believes the Union should have obtained but failed to obtain . . . as a result of its collective bargaining with the respondent . . . ." [211 F. 2d at 627.]

Undeniably, the specific controversy at bar is whether the respondent or the union has correctly interpreted the quoted provisions of Section A of Article XVII of the collective-bargaining agreement. Moreover, since the nature of the controversy is such that the existence or non-existence of an unfair labor practice does not turn entirely upon the provisions of the Act but arguably upon a good-faith dispute as to the correct meaning of the provisions

of the collective-bargaining agreement, the Courts have jurisdiction. [*Square D. Company* v. *N.L.R.B.*, *supra*, 332 F. 2d 360.] Although this may in some cases unavoidably delay exercise of the Board's unquestioned jurisdiction under § 10(a) of the Act to control unfair labor practices affecting commerce [29 U.S.C. § 160(a)], such a rule will not operate to encroach upon that jurisdiction. [fol. 163] For the reasons stated, the Board's petition to enforce the challenged order is denied, and the matter is remanded to the Board with directions to vacate the order and to dismiss the complaint, and all unfair-labor-practice proceedings herein, for lack of the Board's present jurisdiction over the subject matter.

[fol. 164]

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 19,769

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

C & C PLYWOOD CORPORATION, RESPONDENT

DECREE—September 10, 1965

Before: BARNES and KOELSCH, Circuit Judges, and MATHES, District Judge

This cause came on to be heard upon the petition of the National Labor Relations Board, filed December 21, 1964, to enforce an order of said National Labor Relations Board issued by it on August 24, 1964, against the respondent, its officers, agents, successors and assigns, and of the answer, filed January 8, 1965, to said petition.

The court heard argument of respective counsel on July 9, 1965, and has considered the transcript of record and briefs filed in this cause.

On September 10, 1965, the court being full advised in the premises, handed down its decision, and in conformity thereto.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the United States Court of Appeals for the Ninth Circuit that the petition of the National Labor Relations Board be, and hereby is denied, and that this case be, and hereby is remanded to the said Board with directions to vacate the order and to dismiss the complaint, and all unfair-practice proceedings herein for lack of the Board's present jurisdiction over the subject matter.

[File Endorsement Omitted]

[fol. 165]

[Clerk's Certificate Omitted in Printing]

[fol. 166]

SUPREME COURT OF THE UNITED STATES

No. ——, October Term, 1965

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

C & C PLYWOOD CORPORATION

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—December 10, 1965

UPON CONSIDERATION of the application of counsel for petitioner,

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including January 8, 1966.

/s/ W. O. Douglas
Associate Justice of the Supreme Court of the United States

Dated this 10th day of December, 1965.

[fol. 167]

SUPREME COURT OF THE UNITED STATES

No. 884, October Term, 1965

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

C & C PLYWOOD CORPORATION

ORDER ALLOWING CERTIORARI—April 18, 1966

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted. The case is placed on the summary calendar and set for oral argument immediately following No. 876.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1966 O - 223897 10